



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

- - -

UNITED STATES OF AMERICA : CIVIL ACTION  
vs. :  
CONSOLIDATED RAIL :  
CORPORATION, a/k/a CONRAIL, :  
et al. : NO. 590-00056

- - -

January 22, 1993  
Philadelphia, Pennsylvania

- - -

Oral deposition of MICHAEL C. MITCHELL, taken  
in the offices of The United States Attorney,  
615 Chestnut Street, 12th Floor, on the above  
date, commencing at 11:15 a.m., before Janice M.  
Leaman, a Notary Public and Approved Reporter of  
the United States District Court for the Eastern  
District of Pennsylvania.

- - -

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APPEARANCES:

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1 Mitchell

2 (It is hereby stipulated and  
3 agreed by and among counsel that sealing,  
4 certification and filing of the within  
5 deposition are hereby waived; that all  
6 objections except as to the form of the  
7 question are reserved until the time of  
8 trial.)

9 MICHAEL C. MITCHELL, having  
10 been first duly sworn, was examined and  
11 testified as follows:

12 ( Whereupon, a Notice of  
13 Deposition was marked as Exhibit Number  
14 1, for identification.)

15 ( Whereupon, a subpoena was  
16 marked as Exhibit Number 2, for  
17 identification.)

18 ( Whereupon, a letter dated  
19 January 15, 1993, to Michael C. Mitchell  
20 from Maria Polverini, was marked as  
21 Exhibit Number 3, for identification.)

22 BY MR. RUVOLO:

23 Q. Could you please state your name,  
24 sir?

25 A. Michael C. Mitchell.

1 Mitchell

2 Q. And your address?

3 (b) (6)  
4

5 Q. And a telephone number where you  
6 can be reached?

7 A. Area code (b) (6)

8 Q. Just for the record, Mr.

9 Mitchell, I show you Exhibit Number 1,  
10 which is a notice to take deposition that  
11 was served upon you; is that correct?

12 A. Yes.

13 Q. You brought these papers with you  
14 today?

15 A. Yes, I did.

16 Q. And Exhibit Number 2 is a  
17 subpoena that was served upon you at the  
18 same time?

19 A. Yes.

20 Q. And three is a cover letter?

21 A. Yes.

22 Q. In the Notice of Deposition and  
23 the Subpoena you were requested to bring  
24 along with you any documents that you had  
25 in your possession relative to your time

1 Mitchell

2 at work with Conrail and the railroad.

3 Did you bring any documents with you,  
4 sir?

5 A. I did not.

6 Q. Is that because you have none in  
7 your possession?

8 A. That's correct.

9 Q. Okay. You were also advised in  
10 the cover letter that since you are not a  
11 party to this action, you were entitled  
12 to bring an attorney of your own choice  
13 with you to represent you just in case;  
14 is that correct, sir?

15 A. That is correct.

16 Q. And you did not desire to bring  
17 an attorney with you?

18 A. I did not.

19 Q. Okay. Prior to coming here today  
20 and subsequent to receiving the notice,  
21 have you discussed this matter with  
22 anybody as far as your testimony today  
23 would be concerned?

24 A. I received a call from Mr.  
25 Ermilio of the firm of Bingham, Dana and

1 Mitchell

2 Gould advising me that I would be called,  
3 and as far as discussing the case, no.

4 Q. Did you discuss this case with  
5 any other people, former employees or  
6 co-workers at Conrail or anything?

7 A. No, sir.

8 Q. Okay. Would you tell us a little  
9 bit about yourself, what do you do these  
10 days?

11 A. These days I don't do -- as it  
12 relates to work, not very much. I retired  
13 from Conrail in March of 1990, and I am  
14 enjoying my retirement.

15 Q. Good, for you.

16 Can you give us a little bit  
17 about your educational background?

18 A. I am a high school graduate with  
19 additional courses in safety that I was  
20 involved in through my career as a safety  
21 officer at Conrail.

22 Q. When did you start with the  
23 railroad?

24 A. 1953.

25 Q. And at that time that was New

1 Mitchell

2 York Central Railroad?

3 A. That was Pennsylvania Railroad.

4 Q. Pennsylvania Railroad. And where  
5 were you located at that point?

6 A. In Camden, New Jersey.

7 Q. And what function or what  
8 position did you start?

9 A. I hired -- do you want a  
10 background or --

11 Q. Please, if you would.

12 A. I hired in the transportation  
13 department of the Pennsylvania Railroad  
14 back on March 15th, 1953, as a train man,  
15 worked approximately two years, and was  
16 promoted to conductor. This was in  
17 freight service.

18 Q. Okay.

19 A. I continued to work as a train  
20 man conductor until 1958 when I served  
21 two years in the U.S. Army. I returned to  
22 duty in early 19 -- in 1960, and worked  
23 approximately eight years as a train man  
24 conductor, and after that time was  
25 involved with what was called at that

1 Mitchell

2 time the eastern region training center,  
3 which was a training center for new hire  
4 train men and firemen. And that was on  
5 the Penn Central at that time.

6 Q. This was in '68?

7 A. That's correct. And I worked at  
8 that job on and off until 1973, at which  
9 time I was promoted into the management  
10 ranks as a superintendent of safety for  
11 the eastern region. I worked one year at  
12 that position and was promoted to general  
13 superintendent safety for the Penn  
14 Central system. Four years later after  
15 the transition into Conrail, in 1978,  
16 September 30th, I believe, I was promoted  
17 to director of safety for Consolidated  
18 Rail, worked that position until my  
19 retirement date.

20 Q. And that was in late '90?

21 A. It was March 1st, 1990.

22 Q. Okay. Going back to the period  
23 '60-'68 when you were train man and  
24 conductor, where was that located?

25 A. Right in the Camden area.



1 Mitchell

2 Q. In the Camden area. And '68 to  
3 '73, the training center?

4 A. The training center was located  
5 at 30th Street Station.

6 Q. Okay. So, you have been more or  
7 less located in the Philadelphia area  
8 pretty much your entire career?

9 A. That's correct.

10 Q. Okay. You haven't been stationed  
11 out in Elkhart, Indiana?

12 A. No, I have not. Is the question  
13 have I been stationed there, is that what  
14 you asked me?

15 Q. Yes. I presume you have been out  
16 there on business.

17 A. Yes, I have.

18 Q. In '73 as superintendent of  
19 safety for the eastern region, what was  
20 your responsibilities?

21 A. It was to insure that all safety  
22 programs and policies were implemented  
23 and adhered to by the employees and  
24 management team of the eastern region.

25 Q. Did you develop policies yourself

1 Mitchell

2 or have a hand in it?

3 A. At that time, no. I might have  
4 had a hand formulating rules or  
5 practices, yes. I --

6 Q. And what would the safety  
7 policies entail; I mean, is it just for  
8 the conductors and engineers and the  
9 train people, or was it more than that?

10 A. It was for the -- for all, we  
11 will call them, for the sake of argument,  
12 blue collar workers or union employees,  
13 for the most part.

14 Q. Did any of the safety policies  
15 have to do with what we knew then as  
16 hazardous materials, you had to handle  
17 them or recognize them, or otherwise --

18 A. The -- certainly the safety  
19 policy would have something to say about  
20 we will call it hazardous materials or  
21 caustic chemicals and how to handle them,  
22 okay, if, in fact, you were working with  
23 them, and we did have those.

24 As far as policy for the  
25 transportation and handling of hazardous

1 Mitchell

2 materials, at the time that we are  
3 talking about, that was handled by a  
4 separate department.

5 Q. And what department would that  
6 be?

7 A. That would have been -- I am not  
8 sure what it was called, but I know it  
9 was under the umbrella of the operating  
10 rules department. That was not a part of  
11 safety at that time.

12 Q. I see. Do you know who was in  
13 charge of that department?

14 A. The fellow is deceased, Jack  
15 Rathvon, R-A-T-H-V-O-N, was his name. I  
16 may be wrong on that. We are going back  
17 quite a ways here. When I got into  
18 management, Jack Rathvon ran the  
19 operating rules section.

20 Q. Okay. And the operating rules  
21 section was responsible for assuring the  
22 policy as to the handling and  
23 transportation of hazardous --

24 A. Yes. At that time.

25 Q. At that time?

1 Mitchell

2 A. Yes.

3 Q. Subsequent to that, who took  
4 over?

5 A. Well, eventually -- and I can't  
6 give you the date -- the hazardous  
7 materials section was moved from  
8 operating rules department and made a  
9 part of the safety department.

10 Q. What did you personally have to  
11 do with that aspect of the policy?

12 A. When?

13 Q. Say, in '74 or up until '78.

14 A. Up until '78? Not much. I was  
15 in -- my major focus at that time was  
16 employee safety. And I reported to a  
17 director of safety, and at that time the  
18 manager of hazardous material reported to  
19 him, also.

20 Q. Okay. Do you know who the  
21 director of safety was at the time?

22 A. Yes, I do.

23 Q. Would you give us his name?

24 A. W. -- I am thinking his middle  
25 initial was L, Hedderman,

1 Mitchell

2 H-E-D-D-E-R-M-A-N.

3 Q. And who was the head or who was  
4 in charge of hazardous materials  
5 function?

6 A. A fellow by the name of Jess  
7 Dehl, D-E-H-L.

8 Q. And were they both located in  
9 Philadelphia?

10 A. Yes.

11 Q. And this is before the takeover  
12 or the reorganization under Conrail?

13 A. Yes.

14 Q. Or about the same time?

15 A. About -- a little -- about and at  
16 the same time, I would say.

17 Q. And then after the takeover or  
18 the reorganization to Conrail, did they  
19 continue in those positions?

20 A. Yes, they did.

21 Q. Do you know whether they are  
22 still there or working for --

23 A. They are not working. They are  
24 both retired.

25 Q. And in '78 you became the

1 Mitchell

2 director of safety?

3 A. Correct.

4 Q. Again out of Philadelphia?

5 A. Correct.

6 Q. And that was to handle the whole  
7 entire eastern region?

8 A. That was to handle the --

9 Q. The entire system?

10 A. The entire system.

11 Q. And basically could you tell us  
12 what your functions were?

13 A. Well, on a larger scale, similar  
14 to what I described on the eastern  
15 region. I was responsible for all  
16 employee safety and at that time also  
17 passenger safety, because we had the  
18 passenger operations, was prior to  
19 Amtrak. So, when I took over, I had that.  
20 Also, I was responsible for the handling  
21 and transportation of hazardous  
22 materials, and in addition to that  
23 reporting requirements to the department  
24 -- federal and state reporting  
25 requirements, accident reporting.

1 Mitchell

2 Q. When you say you are responsible  
3 for these functions, what did that  
4 entail; was that more in the way of  
5 issuing recommendations or notices or  
6 bulletins or something of that nature to  
7 the Conrail people, or was it a hands-on  
8 kind of a thing where you would go out  
9 and give lectures or --

10 A. Are we talking about safety or  
11 haz/mat or what?

12 Q. Safety.

13 A. Safety would be creating rules,  
14 policies, procedures for the most part,  
15 and going out, not so much to the  
16 employee -- although during our field  
17 trips or during my field trips and my  
18 staff members' field trips, we would  
19 contact employees, you know, on the job  
20 and speak with them, and conduct seminar,  
21 safety seminars, for management, was  
22 certainly part of our responsibilities.

23 Q. Did you also conduct seminars for  
24 hazardous materials?

25 A. Yes, we -- well, yes. To answer

1 Mitchell

2 your question.

3 Q. What did that type -- what type  
4 of seminars, what type of courses were --

5 A. Well, it was to familiarize and  
6 keep current our field forces as far as  
7 the regulations were concerned, and what  
8 was required as far as reporting.

9 Q. Okay. Did you have any connection  
10 with the shippers or the rail car owners  
11 that used the system such as the owners  
12 -- manufacturers of tank cars or the  
13 owners of tank cars?

14 A. I didn't. I did not personally  
15 that much, although I met shippers, but I  
16 had a fellow working for me that handled  
17 all that, the manager of hazardous  
18 material. And the answer to your question  
19 is yes, but I didn't do it myself. It was  
20 done by my manager.

21 Q. So, there was an interface with  
22 the --

23 A. Manufacturers.

24 Q. -- manufacturers of --

25 A. Shippers, yes.



1 Mitchell

2 Q. Shippers and et cetera?

3 A. Yes. And as a matter of  
4 information, that has grown immensely,  
5 you know, in the last few years.

6 Q. Since you were in the safety  
7 department at the time, when did the big  
8 change as far as -- if there was a big  
9 change -- as far as awareness of  
10 hazardous materials take place; was it  
11 as strong under your years at Penn  
12 Central; was there a time when it became  
13 more concentrated?

14 A. No. It was certainly -- certainly  
15 wasn't as strong. Or -- no, in my time  
16 with Penn Central. I don't want to give  
17 you a year, but most likely as soon as  
18 the EPA showed up and started to focus on  
19 the environment, and it seemed like --  
20 and I don't know what date that was or,  
21 you know, what year that organization was  
22 put together, but it seemed like, I would  
23 say, in the last ten years it's really  
24 been very strong focus on hazardous  
25 material.

1 Mitchell

2 Q. How would you become aware of  
3 these hazardous materials; I mean, were  
4 there regulations handed out by the EPA  
5 or other environmental agencies or --

6 A. By the Department of  
7 Transportation formulated the regulations  
8 for transporting and handling of  
9 hazardous materials.

10 Q. So, most the regulations came  
11 through the DOT?

12 A. Yes. As far as transportation and  
13 handling.

14 Q. As far as transportation and  
15 handling?

16 A. Yes.

17 Q. Okay. Let's concentrate during  
18 the period, say, from '73 when you became  
19 superintendent of safety for the eastern  
20 region until '78 when you became director  
21 of safety.

22 Were you aware of any incidents  
23 that occurred in the Elkhart yard  
24 involving hazardous materials, spills or  
25 accidents or incidents?

1 Mitchell

2 A. I would not have been involved in  
3 anything, because that wasn't my area of  
4 responsibility. Did I hear of it? I  
5 don't remember that I heard of it, heard  
6 of any accidents out there unless they  
7 were, you know, catastrophic, I probably  
8 would have heard. If it was just a spill  
9 or release of material, I doubt it.

10 Q. You doubt it. But if there were a  
11 major accident or incident, it would come  
12 through you one way or another; would  
13 there be reports filed with your office?

14 A. Not for Elkhart.

15 Q. Not for Elkhart?

16 A. No. At the time that you are  
17 speaking of, in that time frame, I  
18 believe there were -- and I don't really  
19 remember, want to give you a guess --  
20 about seven regions, the eastern region  
21 being one. Elkhart was contained in what  
22 was called at that time the southern  
23 region. That doesn't hold true today, I  
24 don't believe. I don't know how -- their  
25 structure keeps changing, seems like

1 Mitchell

2 every couple years. So, I would be -- in  
3 other words, my purview was the eastern  
4 region, anything that transpired there  
5 that I was responsible for, certainly I  
6 would be into. But on the southern  
7 region, nothing at all.

8 Q. And who would you report to at  
9 that time?

10 A. I reported as the eastern region  
11 superintendent of safety to a fellow  
12 named Bob, Robert Young, who was -- I  
13 don't know what his title was, it was  
14 either assistant director or general  
15 superintendent or manager -- no, I think  
16 it was a manager of safety, I believe.

17 Q. And would he just cover that  
18 region, or would he cover other regions?

19 A. No, he -- all the regional  
20 people, the regional superintendents,  
21 reported to Bob Young at that time.

22 Q. So, if anything happened out at  
23 Elkhart, he would hear about it?

24 A. Sure.

25 Q. Okay. That's where I was going.

1 Mitchell

2 And then from '78, the  
3 beginning of '78, did there come a time  
4 that you got involved with the Elkhart  
5 system or the happenings that occurred at  
6 the Elkhart?

7 A. Yes.

8 Q. And --

9 A. Not just Elkhart, obviously, but  
10 system-wide.

11 Q. System-wide?

12 A. Yes.

13 Q. So, now, the reports started  
14 coming through you as well from  
15 throughout the system?

16 A. They came into our office,  
17 correct.

18 Q. Right. And they would be reports  
19 regarding accidents or safety violations  
20 or what? You tell me.

21 A. We would receive accident reports  
22 on anything that met the DOT criteria,  
23 which included employee injuries, if it  
24 met a certain criterion, grade crossing  
25 accidents --

1 Mitchell

2 Q. Okay.

3 A. -- on the safety side,  
4 trespasser, that sort of thing, and then  
5 we also received our hazardous material  
6 spill reports or accident reports.

7 Q. Okay. And they came to your  
8 office --

9 A. That's correct.

10 Q. -- from throughout the country,  
11 from throughout the system?

12 A. Yes.

13 Q. Prior to February, or the  
14 beginning of 1981, so we are talking  
15 about the period of '78 through '81, do  
16 you recall receiving any reports about  
17 any major hazardous material incidents  
18 that occurred out at Elkhart?

19 A. Counselor, I can't remember that  
20 far back.

21 Q. Okay.

22 ( Whereupon, a hazardous  
23 materials incident report dated February  
24 3, 1981, was marked as Exhibit Number 4,  
25 for identification.)

1 Mitchell

2 BY MR. RUVOLO:

3 Q. Mr. Mitchell, I show you  
4 Plaintiff's Exhibit Number 4 for  
5 identification and ask if you can tell us  
6 what that is.

7 A. I believe this was the form we  
8 sent to the Department of Transportation  
9 on a hazardous material incident.

10 Q. Okay. And I refer you to page --  
11 the second page, which is marked C013492  
12 at the bottom right-hand corner, and I  
13 know it's blurred, but does your name  
14 appear as director of safety, and is that  
15 your signature to the right?

16 A. My name does appear as director  
17 of safety. That's a stamp of my  
18 signature, counselor.

19 Q. Is that the normal procedure, you  
20 would stamp it?

21 A. Yep.

22 Q. And this is a report that's dated  
23 February 11th, 1981?

24 A. Yes.

25 Q. And it concerns an incident that

1 Mitchell

2 occurred on February 3rd, 1981, at  
3 Elkhart?

4 A. Yes.

5 Q. And the first two pages, at  
6 least, is a Department of Transportation  
7 form; is that correct?

8 A. Yes.

9 Q. For the reporting of hazardous  
10 materials?

11 A. Yes.

12 Q. Okay. And this involved a spill  
13 at Elkhart?

14 A. A leak.

15 Q. A leak of Xylene?

16 A. That's what it -- yes.

17 Q. I refer you to item E.

18 A. Yes.

19 Q. Now, this report that you signed  
20 or had stamped with your name on it has  
21 various attachments to it, on the third  
22 page, 13493 also bears your signature or  
23 a stamp of your signature; is that  
24 correct?

25 A. That's correct.



1 Mitchell

2 Q. This is a report that you would  
3 file with the Department of  
4 Transportation?

5 A. Yes.

6 Q. Okay. The attachments, are they  
7 reports that you received in your office?

8 A. These are -- I am just starting  
9 to look through them right now. It looks  
10 like notes that -- I don't know who would  
11 have taken that note, but it certainly  
12 looks -- this looks like it came from our  
13 safety department files because of these  
14 flash reports, this is a police report,  
15 the second -- I don't know who this  
16 handwritten notes -- I don't know whose  
17 notes they are.

18 Q. That's page 13494?

19 A. I am sorry, 13494.

20 Q. Okay.

21 A. Although, they do look, as I  
22 recall them, that might be Jim Harding's  
23 penmanship. The next page 13495 is a  
24 police report that we get -- would  
25 receive a copy of. We are hooked up --

1 Mitchell

2 safety department is hooked up with the  
3 police so that we receive any reports  
4 that they would generate.

5 Q. Okay. When you talk about safety  
6 department, you are talking about your  
7 safety department or the one in Elkhart?

8 A. Yes.

9 Q. Your safety department?

10 A. My safety department.

11 Q. So, your office would get the  
12 report from the police department?

13 A. Yes.

14 Q. Okay.

15 A. And I am looking now at a page  
16 here 13496, that looks like a routing of  
17 the car, the -- the car comes on line,  
18 the car -- the car's activity when it's  
19 on Conrail.

20 Q. Where it came from, what it's  
21 carrying and where it's going?

22 A. Yes. Yes.

23 Q. Next page?

24 A. That's movement information on  
25 the car. That's 13497. And I am now

1 Mitchell

2 looking at 13498, which is a CT 65, and  
3 this is a Conrail form that's used in the  
4 field to gather the information that's  
5 supplied to DOT.

6 Q. So, whoever went out, out at  
7 Elkhart, would make a report of what they  
8 found as far as the incident is  
9 concerned; is that --

10 A. Correct.

11 Q. Is that what this report is?

12 A. Well, I am not sure of the  
13 mechanics, whether it would be a  
14 supervisor or someone on scene reporting  
15 into the movement desk.

16 Q. Okay.

17 A. Okay?

18 Q. And generally, would it be the  
19 supervisor's responsibility to fill out  
20 this kind of a report, or would it be --

21 A. It would usually be the  
22 responsibility as superintendent of that  
23 particular division to insure that we got  
24 the correct information in a timely  
25 fashion.

1 Mitchell

2 Q. There is no signature on this and  
3 you don't know --

4 A. No, there is not.

5 Q. -- who reported it?

6 A. No, there is not.

7 Q. 13500, is that a standard form  
8 that's issued in regard to --

9 A. That is something that we have in  
10 our computer -- or our system where you  
11 can go in by commodity code or you can  
12 access the chemical, you know, any  
13 chemical that we ship is in there so that  
14 we can access it so that we can -- if in  
15 fact something does happen, we have a  
16 spill or a leak, how we are to handle  
17 this chemical.

18 Q. Okay. That would be how to  
19 protect the employees --

20 A. And the environment.

21 Q. -- and the environment?

22 A. Yes.

23 Q. And that's pretty much of a  
24 standard form in the sense that wherever  
25 this particular chemical is involved,

1 Mitchell

2 this would go out and this report would  
3 be on the computer system and they could  
4 bring it up and say, "Okay, it's  
5 Xylene," or whatever it was --

6 A. No.

7 Q. "This is how we handle it"?

8 A. Counsel, let me ask you a  
9 question? Are we still in that time  
10 frame that you mentioned?

11 Q. Well, we are talking more about  
12 this particular time, which would be  
13 February 3rd, '81?

14 A. No, that's correct. Yes.

15 Q. When did these start going into  
16 existence?

17 A. I thought that's what you were  
18 going to ask me.

19 Q. Now that you asked me.

20 A. I don't recall. I don't recall. I  
21 couldn't give you a date.

22 Q. Okay. But it had to be prior to  
23 at least February 3rd, 1981?

24 A. Yes.

25 Q. The next page is --

1 Mitchell

2 A. I don't have any idea what this  
3 -- I mean, I don't know what 63 shoes  
4 means, and eight, looks like keys, 20 PT,  
5 15 B -- I don't have any idea what this  
6 -- what Exhibit 13501 refers to.

7 Q. Okay. 502.

8 A. That's, again, movement  
9 information.

10 Q. Now, would this occur after the  
11 incident, or would this still be part of  
12 the original movement?

13 A. I don't know that. No, this -- I  
14 don't know that. You would have to look  
15 back here to -- the incident happened  
16 February 3rd, this has got a date on it.  
17 Let's see. I don't know. I would be  
18 guessing. I don't -- wait a minute. I  
19 wouldn't -- I don't know the answer to  
20 that question.

21 Q. And the 503?

22 A. Question?

23 Q. Is it a report to you or did you  
24 receive the copy of --

25 A. I received a copy of this.

1 Mitchell

2 Q. Who would Mr. F. L -- I don't  
3 know if it's a Mr. -- Manganaro be?

4 A. Manganaro was the manager of  
5 environmental control at that time.

6 Q. And that's in Philadelphia?

7 A. Correct.

8 Q. And would his responsibility  
9 include the hazardous materials  
10 supervision or involvement or what?

11 A. He and the environmental group,  
12 which was I think consisted of three or  
13 four people at that time, worked more  
14 with my manager of hazardous material  
15 than with me. You know, we were  
16 responsible for, again, transportation  
17 and handling of the hazardous commodity,  
18 and if it was spilled or leaked, then Mr.  
19 Manganaro's group was in charge of or  
20 responsible for, you know, cleanup.

21 Q. Just so I can follow it, the  
22 report is from E.B. Erickson who was a  
23 master mechanic --

24 A. Correct.

25 Q. -- to Mr. Manganaro with copies

1 Mitchell

2 to yourself and Mr. J. M. Dragovic; what  
3 was the line or the connection between  
4 the four?

5 A. Well, we had a leaking car that  
6 we had to report to the government, and I  
7 guess they just copied me to let me know  
8 that the environmental process -- if  
9 that's, what, in fact, this -- that's not  
10 similar to the other report?

11 Q. It's a little different.

12 A. Is this report more  
13 comprehensive? I think it is, isn't  
14 it? I bet it doesn't look -- it's  
15 well-done. It appears that this report,  
16 which is April the 8th, is a much more --  
17 although it's on the same form, is it  
18 not?

19 Q. Yes.

20 A. -- is a much more comprehensive  
21 -- although I can't read it very well.  
22 Because it gets into the details. But I  
23 can see here, but it's very difficult. I  
24 can't read it. Whereas the first report,  
25 13498, has no details.



1 Mitchell

2 Q. What I am trying to understand is  
3 the process or the procedure that was  
4 followed.

5 A. In this report?

6 Q. And why the various people here,  
7 Manganaro, Mitchell, yourself and  
8 Dragovic were notified; what was the  
9 relation?

10 I know you had to do a report  
11 for the department of --

12 A. And we were under a time frame,  
13 as I recall, 15 days at that time. Now, I  
14 understand -- as I recall, that was  
15 changed. They gave us more time to  
16 report. But we were under a 15 day  
17 restriction as far as getting this  
18 information into the Department of  
19 Transportation, as I recall. And so that  
20 we would have to get as much as we could  
21 and get that report in.

22 Now, I can only -- I hate to  
23 use this -- no, I won't use it -- assume  
24 that this was a follow-up report with  
25 additional information, because we

1 Mitchell

2 already submitted, I am sure, or did  
3 we?

4 Q. Yes, your report went in on --  
5 well, it was dated February 11th.

6 Who prepared this report that's  
7 shown on the first two pages 491 and 492,  
8 was that your office?

9 A. My office, correct.

10 Q. And that was based upon the  
11 information that you received through the  
12 attachments to this report, the reports  
13 from the master mechanic, et cetera?

14 A. Yes.

15 Q. Okay. And this report in total --  
16 I know this Exhibit 4 in total is what  
17 was sent to -- except for the part that  
18 came in letter in April -- is what was  
19 sent to the Department of Transportation?

20 A. I believe the transportation --  
21 or the Department of Transportation  
22 received -- I don't know that they  
23 received a whole report. I would think  
24 that they received the first three pages,  
25 first two pages being a report and the

1 Mitchell

2 third page, which is 13493, being my  
3 cover letter dated February 11th.

4 Q. Okay. So that they only got the  
5 first three pages; is that generally the  
6 procedure?

7 A. I believe it is, yes. I don't  
8 think we would have any supporting  
9 documents, although we keep them on file.

10 Q. Okay. I see. Okay. Let me have  
11 this marked Exhibit Number 5, please.

12 ( Whereupon, a hazardous  
13 materials incident report dated July 6,  
14 1981, was marked as Exhibit Number 5, for  
15 identification.)

16 BY MR. RUVOLO:

17 Q. Mr. Mitchell, I show you Exhibit  
18 Number 5, for identification and ask if  
19 you can identify that for us?

20 A. First page is -- shows a report  
21 to the Department of Transportation about  
22 hazardous material leak.

23 Q. That's page 13506.

24 And what was the material that  
25 was involved?

1 Mitchell

2 A. Sulfuric acid.

3 Q. And the amount was approximately  
4 50 gallons; is that correct, and --

5 A. Estimated at 50 gallons, yes.

6 Q. And this was another spill?

7 A. That's correct.

8 Q. And on page two, which is 13507,  
9 refers to a defective pipe nipple and two  
10 employees were treated and released; is  
11 that correct?

12 A. That's -- yes, that's what the  
13 report reflects.

14 Q. The incident happened on July 6th  
15 of '81, and your report is dated July  
16 27th of '81; is that correct?

17 A. Yes.

18 Q. There is no cover letter on this  
19 one, but there are reports attached; is  
20 that correct, referring to pages 13508  
21 through 510, and then a separate report  
22 511 and 12.

23 A. I am sorry, what was the question  
24 again, counsel?

25 Q. The reports that were involved

1 Mitchell

2 that you received are shown on pages  
3 13508 through 10, and then another report  
4 on page number 511 and 12; is that  
5 correct?

6 A. Yes. I am not -- I don't recall  
7 -- of course, I didn't see everything,  
8 every piece of paper that went through my  
9 office. But I don't remember seeing a car  
10 failure report, but I have to assume that  
11 we received those if, in fact, a car did  
12 fail.

13 Q. Now, what distinguishes a car  
14 failure report from, say, the previous  
15 one which is merely the accident report;  
16 I mean, what would be required if there  
17 were a car failure report?

18 A. Required by whom?

19 Q. As far as the car itself is  
20 concerned; would it then be pulled off  
21 and repaired, or have to be repaired or  
22 --

23 A. Yes. Yes. It wouldn't be -- the  
24 shipment would stop and we would have to  
25 have it repaired.

1 Mitchell

2 Q. Would the shipper or the  
3 consignee be notified?

4 A. I guess it would be based on the  
5 chemical. If, in fact, it wasn't that  
6 dangerous a chemical, we would probably  
7 repair it ourselves, if we could. And I  
8 know we have done that on various  
9 shipments. But, of course, if it got a  
10 little sticky, we would certainly get the  
11 shipper in. And we have done that many  
12 times, also.

13 Q. Can we tell from this report  
14 whether the shipper was brought in?

15 A. I would have to read it. I am  
16 going to guess based on what the defect  
17 was that we may have handled this  
18 ourselves, and that was -- dome cover was  
19 loose, I believe. I cannot tell from this  
20 car failure report. I would just be  
21 guessing at whether we fixed it or the  
22 shipper fixed it.

23 Q. Okay. 513, 14, the movement  
24 information in there, is that correct, or  
25 is that --

1 Mitchell

2 A. Movement and chemical.

3 Q. Movement and chemical?

4 A. Yes.

5 Q. 515 is what to do with the  
6 sulfuric acid, how to handle it, how to  
7 treat it?

8 A. Yes.

9 Q. 16 and 17 is a copy, 18 is a copy  
10 of previous reports, as well as 19, 20,  
11 21, 22 and 23; they are repeat copies of  
12 duplicates. 24, again, is a report from  
13 the terminal and general foreman, and  
14 similar reports that were previously  
15 testified to which I assume that he  
16 received when making out his report; is  
17 that correct?

18 Would that be fair?

19 A. I am sorry?

20 Q. I assume that these reports that  
21 are attached to Mr. Beggs' report, the  
22 terminal general foreman, are copies,  
23 since they are copies of what previously  
24 was given by Mr. Hupp; in other words,  
25 Beggs got these reports and then filled

1 Mitchell

2 out his reports based upon them?

3 A. I would say yes.

4 Q. And they came to you?

5 MR. CUNNINGHAM: Biggs,  
6 B-I-G-G-S; right?

7 MR. ERMILIO: I think it's  
8 B-E-G-G-S.

9 MR. RUVOLO: I think it's an E.

10 MR. CUNNINGHAM: Looks like  
11 13531 at the bottom, B-I-G-G-S; somebody  
12 got it.

13 MR. ERMILIO: Are you asking Mr.  
14 Mitchell to speculate what Mr. Biggs did  
15 and what Mr. Hupp did with the  
16 documents? I don't --

17 MR. RUVOLO: No. I am just  
18 asking if these are the documents that  
19 ultimately arrived in his office and in  
20 his shop before he prepared this report  
21 to the Department of Transportation or in  
22 connection with the report to the  
23 Department of Transportation.

24 THE WITNESS: No. You know,  
25 that's a good question in this regard. I



1 Mitchell

2 don't see any -- here, we are. We  
3 received this -- we sent in the report on  
4 this incident July 27th, 1981. We  
5 received this report, this follow-up  
6 report, on August 20th. I am referring to  
7 13524, August the 20th, 1981. So, this  
8 was way after we had submitted our  
9 initial report to the DOT. You notice it  
10 has -- on Exhibit 13524, we have a safety  
11 date stamp showing August 20th, 1981,  
12 received.

13 BY MR. RUVOLO:

14 Q. The initial report, though --  
15 which is page 13508, was received by your  
16 department on July 13th; is that  
17 correct?

18 A. That's correct.

19 Q. And that was the one that was  
20 filled out by J. F. Hupp, the wreck  
21 master?

22 A. Right.

23 Q. On July 6th?

24 A. Uh-huh. Yes.

25 Q. Then you subsequently on August

1 Mitchell

2 20th received a similar report, typed  
3 report, from Mr. H. E. Biggs, who was the  
4 terminal general foreman, that is dated  
5 July 7th; correct?

6 A. Correct.

7 Q. It would appear that Mr. Biggs'  
8 report, looking at page 13525, had more  
9 to do or something to do with the  
10 injuries to the workers; is that  
11 correct?

12 A. It would -- it shows that Mr. --  
13 the first report 13508, doesn't show any  
14 employee injuries.

15 Q. Okay.

16 A. The report in Exhibit 13524 shows  
17 -- or 13525, shows that a car -- two car  
18 men, I guess while inspecting train, or  
19 foreman and a car man, had mist blown in  
20 their eyes. Now, that wouldn't show on  
21 the wreck master's report, most likely.  
22 All he's going to put down is what he was  
23 involved with, and that was getting this  
24 -- the incident straightened away.

25 Q. Okay.

1 Mitchell

2 ( Whereupon, a hazardous  
3 materials incident report, dated  
4 September 6, 1981, was marked as Exhibit  
5 Number 6, for identification.)

6 BY MR. RUVOLO:

7 Q. Mr. Mitchell, I show you Exhibit  
8 6, for identification, and ask you if you  
9 can identify that for us?

10 A. It's also a report to the  
11 Department of Transportation about a  
12 hazardous material incident.

13 Q. Okay. And that one took place on  
14 September 6th, 1981?

15 A. As the report shows, yes.

16 Q. And the hazardous material was  
17 ethylene glycol?

18 A. Yes.

19 Q. And monomethyl?

20 A. Right.

21 Q. And it involved a car leak?

22 A. Yes.

23 Q. Pages 13532 and 534 are the same  
24 except one is typed and one isn't; is  
25 that correct, the same with 535?

1 Mitchell

2 A. Yes.

3 Q. Who would have -- if you know --  
4 whose responsibility would it have been  
5 to fill out the one that wasn't typed,  
6 534 and 535?

7 A. Well, the -- I am not sure.

8 Q. But the first two and the second  
9 two pages there are basically the same  
10 information.

11 A. Basically, yes.

12 Q. Now, pages 536 and 37 were filled  
13 out by somebody, Joe Ledbet?

14 A. Ledbetter, is it? No -- I have  
15 to look.

16 Q. From Elkhart; is that correct?

17 A. I think that's Ledbetter, I  
18 believe.

19 Q. He was the one that was present  
20 at the incident itself?

21 A. I don't know that.

22 Q. Do you know whether he was from  
23 the Elkhart yard, whether he worked with  
24 the Elkhart yard?

25 A. I believe he worked in the

1 Mitchell

2 division, but I don't know if he worked  
3 right at Elkhart or not.

4 Q. And the last page -- well, 538  
5 and -- 538 and 39 has to do with the  
6 chemical itself?

7 A. Correct.

8 Q. The computer-generated?

9 A. Correct. I might just venture a  
10 guess on CO13534 that it was a draft copy  
11 of the final report, 13532, pencilled and  
12 then retyped to submit. That's my guess.  
13 I think it's a pretty good one.

14 Q. That would not be an unusual  
15 procedure for somebody to --

16 A. Not at all.

17 Q. -- fill it out in ink and then  
18 have a typist prepare it for  
19 transportation?

20 A. Not at all.

21 MR. RUVOLO: Okay, Number 7.

22 ( Whereupon, a hazardous  
23 materials incident report dated 11/16/81,  
24 was marked as Exhibit Number 7, for  
25 identification.)

1 Mitchell

2 BY MR. RUVOLO:

3 Q. I show you Exhibit 7 and ask if  
4 you can identify that for us, Mr.  
5 Mitchell.

6 A. The report of hazardous material  
7 incident occurring on Conrail to the  
8 Department of Transportation.

9 Q. Incident involved was 11/16/81?

10 A. 11/16/81.

11 Q. And your report is dated November  
12 2nd, is that correct, and stamped with  
13 your signature?

14 A. Yes.

15 Q. And sent to the Department of  
16 Transportation?

17 A. Yes.

18 Q. Involving a venting of hydrogen  
19 sulfide?

20 A. Yes.

21 Q. 50 and 51 are similar to what you  
22 just testified to, just filled-in copies  
23 of the same report later to be typed?

24 A. I would say a draft copy, yes.

25 Q. Draft?

1 Mitchell

2 A. Yes.

3 Q. And 52 and 53 would be a report  
4 that was received by your office dated  
5 November 24th from E. B. Erickson a  
6 master mechanic involving the incident?

7 A. Received November 24th, yes.

8 Q. 54 is a weigh bill, copy of a  
9 weigh bill?

10 A. That is correct.

11 Q. Referring to the weigh bill, on  
12 the left-hand -- lower left-hand corner  
13 of the page, under the number 01, it  
14 says, "TC empty last contained hydrogen  
15 sulfide"; is that correct?

16 A. That's what it said.

17 Q. Now, when it says last contained,  
18 what are they referring to or where are  
19 they referring to, if you can tell us  
20 from this weigh bill?

21 A. TC means tank car empty, it's  
22 empty at this particular -- this was  
23 cut, and the commodity prior to whatever  
24 they were going to put in it was hydrogen  
25 sulfide.

1 Mitchell

2 Q. Now, where was the car when it  
3 was reported that it was empty, the tank  
4 car?

5 A. I don't know that.

6 Q. You cannot tell from this?

7 A. I don't know that you can't, I  
8 don't know.

9 Q. And 55 is the hazardous material  
10 computer statement?

11 A. Correct.

12 ( Whereupon, a hazardous  
13 materials incident report dated November  
14 18, 1981, was marked as Exhibit Number 8,  
15 for identification.)

16 BY MR. RUVOLO:

17 Q. I show you Exhibit 8, for  
18 identification, and ask you if you can  
19 identify that?

20 A. Another hazardous material report  
21 to the Department of Transportation from  
22 Conrail.

23 Q. Okay. Bearing your stamped  
24 signature on page 541?

25 A. Yes.



1 Mitchell

2 Q. Dated December 2nd, '81?

3 A. Correct.

4 Q. And very similar to the previous  
5 report in that pages 42 and 43 are  
6 handwritten copies of the draft?

7 A. Correct.

8 Q. 44 is received by your office on  
9 November 23rd.

10 A. Correct.

11 Q. 1981, and it's a hazardous  
12 materials incident report prepared by H.  
13 E. Biggs or Boggs?

14 A. Correct.

15 Q. The last page, 546 is a weigh  
16 bill, next to last page?

17 A. Next to last page, yes.

18 Q. This regarded or concerned a  
19 leaking; is that correct, rather than a  
20 venting?

21 A. Yes.

22 Q. And the chemical was phosphoric  
23 acid?

24 A. That's correct.

25 Q. And the last page is the

1 Mitchell

2 computer-generated report as to how to  
3 handle or deal with phosphoric acid?

4 A. Correct.

5 ( Whereupon, a letter dated  
6 February 25, 1982, to chief information  
7 systems division DOT from M. C. Mitchell  
8 was marked as Exhibit Number 9, for  
9 identification.)

10 BY MR. RUVOLO:

11 Q. I show you Exhibit 9, Mr.  
12 Mitchell, for identification, and ask you  
13 to run through that for us.

14 A. Number 13556 is a cover letter to  
15 the department of transportation advising  
16 that there is a report of a hazardous  
17 material incident attached.

18 Q. Excuse me for interrupting a  
19 second. There is a cc on that to a Mr.  
20 Thomas Phemister.

21 A. Phemister. He's a director -- he  
22 was a director of bureau of explosives  
23 for the Association of American  
24 Railroads.

25 Q. When did the director or when did

1 Mitchell

2 the bureau of explosives come into  
3 existence, if you know?

4 A. I don't know.

5 Q. It existed prior to your being  
6 there?

7 A. I believe it did.

8 Q. Okay. 557 and 58.

9 A. I am sorry, are you asking me  
10 what they --

11 Q. Would you identify --

12 A. That's the report of the -- to  
13 the Department of Transportation of a  
14 hazardous material incident.

15 Q. Involving alcohol?

16 A. Release of alcoholic beverage.

17 Q. And did it relate how the  
18 incident occurred?

19 A. Yes, it did.

20 (Whereupon, an off-the-record  
21 discussion was held.)

22 BY MR. RUVOLO:

23 Q. And this involved -- was involved  
24 in switching operations at Elkhart?

25 A. Yes.

1 Mitchell

2 Q. And one of the cars overrode the  
3 other with their couplers?

4 A. Yes.

5 Q. Causing an eight inch cut in the  
6 tank. And they lost the entire load; is  
7 that correct?

8 A. Yes.

9 Q. Almost 30,000 gallons? 59 and  
10 60.

11 A. Looks like a draft or worksheet.

12 Q. Okay. 61 is the report that was  
13 filled out and received by your office on  
14 February, looks like 23rd?

15 A. I can't validate that. My copy is  
16 really poor. But it's February something.

17 Q. And it was dated February 11th?

18 A. Correct.

19 Q. Weigh bill follows.

20 A. Yes.

21 Q. And what is 564, also part of the  
22 weigh bill?

23 A. Yes. Wait a minute. That's a  
24 Burlington Northern weigh bill, not a  
25 Conrail, so it should come off the bill.

1 Mitchell

2 The car coming off the Burlington  
3 Northern to Conrail and carried this  
4 weight, but --

5 Q. I see. And the hazardous material  
6 description?

7 A. Describing the chemical or the  
8 material.

9 Q. And what would 566 be and 67?

10 A. It's a computer-generated -- what  
11 they call a yard switch list, as  
12 identified down in the upper left-hand  
13 corner of the form, and it gives the car  
14 location in this string of cars, or in  
15 the train, by car initial, car number,  
16 and whether the car was loaded or empty  
17 and to what track it was to be shifted  
18 to.

19 Q. Okay. 67?

20 A. 67 is, again, a hazardous  
21 commodity description printout with a lot  
22 of-- someone used to take notes on the  
23 incident.

24 Q. Would that be issued by Conrail  
25 or by the shipper, for example, this

1 Mitchell  
2 report, the printed part?  
3 A. The computer?  
4 Q. Yes.  
5 A. That's something that Conrail  
6 did. They captured all the commodity  
7 description and put them in a computer so  
8 that our crews and our train crews and  
9 anybody else that's involved would have  
10 this information.  
11 Q. 568?  
12 A. 568 is a Department of  
13 Transportation form called the unusual  
14 occurrence form, and anything unusual  
15 happens in the yard or terminal, the  
16 information would be input at the yard  
17 terminal and a copy of this report would  
18 show up at corporate headquarters in the  
19 morning.  
20 Q. 69 through 72, kind of difficult  
21 to read, so we won't try. But they are  
22 similar forms as attached to the other  
23 reports. And 72 is the material,  
24 hazardous material description?  
25 A. Yes.

1 Mitchell

2 Q. And 73, can you tell us?

3 A. 73 looks like a note, just a  
4 note, that capsulizes the incident that  
5 was probably, I am guessing, put together  
6 just to make -- for record in our office.  
7 I am almost positive that's Jim Harding's  
8 writing.

9 Q. Who is Jim Harding?

10 A. Jim Harding was the assistant  
11 manager of hazardous material, since  
12 retired.

13 Q. Thank you, sir. I neglected to  
14 mention this before, but if there is a  
15 time you would like to take a break or  
16 something, just let us know --

17 A. I am fine, I have a doctor's  
18 appointment a little later on, so --

19 Q. Okay. Number 10, please.

20 ( Whereupon, a hazardous  
21 materials incident report dated February  
22 9, 1983, was marked as Exhibit Number 10,  
23 for identification.)

24 BY MR. RUVOLO:

25 Q. I show you Exhibit 10 and ask if

1 Mitchell

2 you can identify that for us, Mr.

3 Mitchell?

4 A. Exhibit 10 is, again, another

5 report to the Department of

6 Transportation of a hazardous material

7 incident occurring on Conrail.

8 Q. And the incident took place on

9 February 9th, 1983?

10 A. Correct.

11 Q. And the report is dated February

12 28th and bears your stamp signature?

13 A. Yes.

14 Q. And this involved a car that was

15 sideswiped during a switching operation?

16 A. Yes.

17 Q. Which caused the car to roll

18 over?

19 A. Yes.

20 Q. And to leak?

21 A. A small amount of commodity, yes.

22 Q. And the substance was --

23 A. Flammable liquid, NOS.

24 Q. Do you know what that is --

25 A. NOS means not otherwise



1 Mitchell

2 specified.

3 Q. And the attachment to that report  
4 is similar to the ones that were attached  
5 to the previous report?

6 A. Yes, they are.

7 Q. Meaning, there was a draft  
8 attached of the original -- of the final  
9 report and unusual occurrence report and  
10 data as to the train itself, the car  
11 itself?

12 A. Yes.

13 Q. Okay.

14 ( Whereupon, a letter dated  
15 4/6/84 to DOT from M. C. Mitchell was  
16 marked as Exhibit Number 11, for  
17 identification.)

18 BY MR. RUVOLO:

19 Q. Mr. Mitchell, I show you Exhibit  
20 11 for identification and ask if you can  
21 tell us what that represents?

22 A. The Department of Transportation  
23 report from Conrail on a hazardous  
24 material incident.

25 Q. And the first page is a cover

1 Mitchell  
2 letter to the Department of  
3 Transportation?  
4 A. Yes.  
5 Q. Dated April 6th, '84?  
6 A. Correct.  
7 Q. With a cc to Mr. Phemister,  
8 again?  
9 A. Yes.  
10 Q. The next two pages are your  
11 report, or the report that was sent  
12 bearing your signature dated April 6th,  
13 '84?  
14 A. Yes.  
15 Q. Involved hydrochloric acid?  
16 A. Correct.  
17 Q. And there was a leak?  
18 A. Yes.  
19 Q. 88 and 89 are handwritten copies  
20 of drafts?  
21 A. Yes.  
22 Q. 90 is the report received April  
23 5th by your department of a hazardous  
24 material incident?  
25 A. Yes.

1 Mitchell

2 Q. Unsigned, though, as far as we  
3 can determine?

4 A. Correct.

5 Q. And again, the chemical contents  
6 appear on 92 and 93?

7 A. Yes.

8 ( Whereupon, a letter dated  
9 February 19, 1985, to DOT from M. C.  
10 Mitchell, with attachments was marked as  
11 Exhibit Number 12, for identification.)

12 BY MR. RUVOLO:

13 Q. I ask you to look at Exhibit  
14 Number 12, for identification, which  
15 consists of pages numbered 13594 through  
16 --

17 A. Wait a minute. Where are we?  
18 You are going from the --

19 Q. I am giving you the page numbers.

20 A. The exhibit itself.

21 Q. I beg your pardon. I am looking  
22 at this one. The entire exhibit consists  
23 of pages 13594 through 13694, which is  
24 almost 100 pages, I guess.

25 Without taking too much time,

1 Mitchell

2 can we run through it, if you would and  
3 explain what you see or what you can  
4 identify for us, Mr. Mitchell?

5 A. It's -- Exhibit 13594 is a cover  
6 letter dated February 19th, 1985, from  
7 myself, M. C. Mitchell to the Department  
8 of Transportation, but there are --  
9 attached to which is a hazardous material  
10 incident report that occurred on February  
11 4th, 1985, at Elkhart, Indiana.

12 Q. Mr. Phemister was, again, cc'd on  
13 this?

14 A. Yes.

15 Q. And --

16 A. 13595 and 13596 are a copy of the  
17 aforementioned report which occurred,  
18 again, February 4th, 1985, at Elkhart. It  
19 was involved in an empty tank car, it was  
20 discovered leaking vapors.

21 Q. And the --

22 A. Chemical, the last of -- the car  
23 last contained hydrofluoric acid,  
24 anhydrous.

25 Q. And the report was dated February

1 Mitchell

2 19th and bears your signature stamp --

3 A. Correct.

4 Q. -- on page 13596.

5 Can I ask you a question that  
6 seems kind of silly? Just the first  
7 statement, an empty car was discovered  
8 leaking vapors; is that an unusual  
9 incident, or have you run across that  
10 before, or --

11 A. That's happened. Of course, going  
12 back to a statement we made earlier, I  
13 made earlier, the emphasis on  
14 transportation and handling of hazardous  
15 commodities has increased or improved  
16 over the last ten years. And one of the  
17 things that they have to do now with  
18 these cars is purge them. I don't know if  
19 they had to purge the cars back when this  
20 incident occurred or not.

21 Q. When you say purge?

22 A. Cleaning the car out after it's  
23 unloaded, and the -- have we had other  
24 empty cars leaking vapors? Yes, we  
25 have. How many, I don't recall. I mean,

1 Mitchell

2 it wasn't, you know, two a week or I  
3 couldn't give you a number.

4 Q. Not just judging from the size of  
5 the report, but -- and we will go through  
6 it a little bit later on -- but this  
7 seems to have been a major incident in  
8 the sense that fire and police personnel  
9 were called and residents were evacuated?

10 A. Yes. Any time there is an  
11 evacuation, the police and fire are --  
12 personnel, it's not odd for them to show  
13 up at a leak or derailment or anything  
14 like that. But you get into evacuations,  
15 then, yes, that's something that's a  
16 little more than you call normal.

17 Q. And according to the report,  
18 approximately 100 people were treated and  
19 released at local hospitals?

20 A. Yes.

21 Q. Would this incident, in view of  
22 what we just read, require or entail more  
23 detailed or more reporting from your  
24 department or from the people in  
25 hazardous materials department, or such?

1 Mitchell

2 A. This report -- this incident  
3 would require a report to the DOT on the  
4 release of the hazardous material or the  
5 vapors, release of vapors. It would also  
6 entail a report from my office to the  
7 Department of Transportation on these  
8 casualties.

9 Q. How about within Conrail; would  
10 this be the incident you might tend to  
11 call up the chairman or the board of  
12 directors or --

13 A. I am sure that -- that wouldn't  
14 be my responsibility. The senior vice  
15 president of operations is -- was aware  
16 of anything that took -- or happened, you  
17 know, or occurred in anything that would  
18 involve the delay or -- of a train. And  
19 this certainly would be one of those  
20 things. But it would be from a one wheel  
21 derailment up until the most, you know,  
22 catastrophic incident. He would get an  
23 unusual occurrence report which we  
24 referenced earlier going through this  
25 testimony, and he would be aware of that.

1 Mitchell

2 Now, if there is anything --  
3 and I don't know what his criterion was  
4 as far as what he would tell the chairman  
5 or what he would not, but I would have to  
6 assume with this type of an incident,  
7 that he would have relayed that  
8 information on to the chairman.

9 Q. And do you know who the senior  
10 vice president of operations was at that  
11 time?

12 A. Yes. R. B. Hasselton.

13 Q. Is he still --

14 A. He is retired, also.

15 Q. Do you know when he retired?

16 A. I know when he retired, it was  
17 either late '89 or early '90.

18 Q. That's H-A-S-S-E-L --

19 A. E-L, that's a good question.

20 H-A-S-S-E-L-M-A-N.

21 Q. Continue on pages 597, 98 is a  
22 draft. Don't let me put words in your  
23 mouth.

24 A. I don't have that. 594, 95, 96, I  
25 am missing 97. Here, it is. It's out of



1 Mitchell

2 sequence. 57 is again a draft copy of the

3 report -- aforementioned report.

4 Q. 600 is the hazardous materials

5 incident report?

6 A. Conrail's form, yes.

7 Q. In Conrail?

8 A. In-house form.

9 Q. In-house. No date or signed, and

10 there is no date stamp on this one; is

11 that correct?

12 A. There is not.

13 Q. And 602?

14 A. Is an unusual occurrence report.

15 Q. In-house?

16 A. In-house.

17 Q. And that runs through 605?

18 A. Correct.

19 Q. 606, I take it, is a report by a

20 service company?

21 A. It appears to be OHM, yes.

22 Q. Are you familiar with OHM?

23 A. I know that they were under

24 contract to Conrail for any environmental

25 clean-ups that we need, required.

1 Mitchell

2 Q. So, if there was -- were, as you  
3 stated before, a requirement to purge it,  
4 OHM would be the outfit that would do it?

5 A. I don't know that.

6 Q. You don't know that?

7 A. No. It could be the shipper, or  
8 it might be somebody else that the -- OH,  
9 was we called it, we didn't call it, OHM  
10 was Conrail's primary cleanup contractor,  
11 but we used other people, also.

12 Q. And these pages 606 through 612  
13 seem to be daily reports from OHM?

14 A. Yes.

15 Q. Are you familiar with the  
16 gentleman that signed these reports,  
17 looks to be Larry Gaffy, or -- and a  
18 client J. M. Meadows?

19 A. I don't -- J. M. Meadows, I am  
20 guessing that that was Jim Meadows, the  
21 division superintendent.

22 Q. For Conrail?

23 A. Yes. I mean, unless there is  
24 another J. M. Meadows, that's the only J.  
25 M. Meadows I ever knew, and the other

1 Mitchell

2 fellow I don't know who that is.

3 Q. Now, would Mr. Meadows be --  
4 where would his office be based?

5 A. He's long retired.

6 Q. At the time of the incident, do  
7 you know where he would have been based?

8 A. I am guessing that was him. I  
9 don't know any other -- they say client,  
10 so it must be Conrail, and the only J. M.  
11 Meadows I know was in the transportation  
12 department.

13 Q. What I am trying to find out is  
14 whether he would have come out of  
15 Philadelphia office or more likely --

16 A. No. No. At the time, if in fact  
17 -- if this is the fellow that I am  
18 thinking of -- he would have been based  
19 out west somewhere.

20 Q. Okay. I refer you to pages 613  
21 through 618. I ask you if you can tell us  
22 what that represents?

23 A. I never -- I don't recall ever  
24 seeing this. This looks -- it's listed as  
25 National Transportation Safety Board

1 Mitchell

2 Bureau of Technology, and goes onto say  
3 that it's a preliminary operations group  
4 factual report, the accident occurred at  
5 Elkhart on February 4th, 1985.

6 Q. This would be a report prepared  
7 by the Department of Transportation?

8 A. That's what it appears to be to  
9 me, yes.

10 Q. Okay. 619 is --

11 A. Movement information on that  
12 particular car.

13 Q. Okay. I refer you to pages 620  
14 through 625, and ask you if you have seen  
15 that before or can tell us what that  
16 represents?

17 A. I don't recall seeing this  
18 particular report. However, it's headed  
19 as an Association of American Railroads  
20 bureau of explosives, report of basic  
21 accident data.

22 Q. Could that be -- would anybody  
23 from Conrail help in the preparation of  
24 that report?

25 A. I doubt it.

1 Mitchell

2 Q. You wouldn't know who Mr. Thomas  
3 M. Davis was, his signature appears at  
4 the bottom of page 620?

5 A. No.

6 Q. Would this report or a copy of  
7 this report be sent to the Department of  
8 Transportation?

9 A. I don't know that.

10 Q. Would it be sent to Conrail?

11 A. I don't recall ever receiving  
12 this report to take -- to review. Now, I  
13 am not saying that it wasn't sent, you  
14 know, I didn't ask to see it or need to  
15 see it. So, obviously this particular one  
16 was, if this come out of our files,  
17 although -- yes, it did, or did it? I  
18 don't know that that's our stamp up on  
19 that first page, date stamp, February  
20 15th. Is that -- I guess that's safety  
21 department.

22 Q. Yes, it would be --

23 A. I don't recall seeing this.

24 Q. On the last page, page 625, there  
25 are a series of names to whom copies were

1 Mitchell

2 sent; do you recognize any of those  
3 names?

4 A. Yes, I do.

5 Q. Could you tell us who -- which  
6 ones you recognize?

7 A. Starting from the top, R.B.  
8 Hasselman, the senior vice president of  
9 operations.

10 Q. Is that the gentleman we referred  
11 to before?

12 A. Yes.

13 Q. Okay.

14 A. D. A. Swanson, vice president of  
15 transportation, and J. R. McNally,  
16 manager of hazardous material control.  
17 Also J -- I can't make out his middle  
18 initial, Southworth, manager of field  
19 operations bureau of explosives. I  
20 remember also the name R. S. Onacki, I  
21 don't remember -- terminal superintendent  
22 at Elkhart, but I don't remember meeting  
23 him.

24 Q. The ones that you did, the four  
25 that you did mention, would they have

1 Mitchell

2 been stationed in Philadelphia?

3 A. Mr. Hasselman, Mr. Swanson and  
4 Mr. McNally were stationed in  
5 Philadelphia. Mr. Southworth was  
6 stationed in Washington, D.C. Mr. Onacki,  
7 terminal superintendent, would obviously  
8 be at Elkhart terminal.

9 Q. And the other gentleman you are  
10 not familiar with?

11 A. I don't know that.

12 Q. Okay. Exhibit 1, which evidently  
13 was an attachment to the previous report,  
14 appearing on page 626, would that be a  
15 Conrail document?

16 A. No. Not that I -- I have never  
17 seen it. It's attached to it, -- it's  
18 attached to it, but Burlington Northern  
19 Railroad weigh bill. So, I am assuming  
20 that it's something -- a report that's  
21 generated for moving of cars from Canada  
22 into the United States, and vice versa.

23 Q. It's a Burlington Northern  
24 Railroad empty car weigh bill. Okay.

25 Exhibit 2, would have any

1 Mitchell

2 relation to Conrail?

3 A. No.

4 Q. Is this movement information?

5 A. You mean, item 13629?

6 Q. Yes.

7 A. No.

8 Q. 630?

9 A. They are tracking a car here, but  
10 I don't know -- I am not familiar with  
11 13630.

12 Q. 631 appears to be a statement  
13 taken by the Department of  
14 Transportation?

15 A. Yes.

16 Q. And it was given by the terminal  
17 superintendent, or was given at the  
18 terminal superintendent's office in  
19 Elkhart?

20 A. Correct.

21 Q. On February 4th. Do you know who  
22 W. Matthews was?

23 A. Well, I just read the first  
24 couple lines of this statement, and I see  
25 Wilbur Matthews answers the question,



1 Mitchell

2 your position, brakeman. So, he worked  
3 for Conrail as a brakeman.

4 Q. And the same with page 633, Mr.  
5 Cox is also a Conrail employee. And I  
6 take it -- as well as Mr. Gaffy -- and  
7 these were --

8 A. Mr. Cox was -- yes, he's a  
9 Conrail employee, also.

10 Q. 13638 is a statement by the  
11 conductor; is that correct?

12 A. Robert J. Koren, conductor, train  
13 BNEL3Y.

14 Q. Again, this would be a statement  
15 given to the National Transportation  
16 Safety Board?

17 A. I don't think so. I think this is  
18 a statement to Hazardous Materials  
19 Inspector Keen, L. R. Keen.

20 Q. And who would he represent?

21 A. He would be a Department of  
22 Transportation.

23 Q. Okay. Have you seen something  
24 like what appears on pages 641 for 643  
25 before?

1 Mitchell

2 A. Yes.

3 Q. Which is a what?

4 A. Transcript of a taped radio  
5 conversation between the Burlington  
6 Northern hump tower yard master and our  
7 train, Conrail's train, BNEL3Y.

8 Q. This was a conversation that took  
9 place on February 4th, or is this just  
10 the report is prepared on February 4th?

11 A. Looks to me as if the report was  
12 prepared on February 4th.

13 Q. Now, is it typical to record  
14 radio conversations?

15 A. Yes.

16 Q. And is this in the yard itself,  
17 or where?

18 I mean, I see this is between  
19 the hump tower, the yard master and --

20 A. They -- as I recall, they have  
21 taping devices in some of the terminals  
22 and also at the division headquarters in  
23 the movement desk, there might be taping  
24 apparatus.

25 Q. And where would the taping --

1 Mitchell

2 where would the train be when the taping  
3 begins; is it coming into the yard?

4 A. Well, if it -- it could be. It  
5 could be anywhere where he's within radio  
6 range of the base station or the taping  
7 station.

8 Q. And would they tape every  
9 conversation that comes in?

10 A. Yes.

11 Q. Or would it be --

12 A. Yes, if they -- every  
13 conversation that goes on between a crew  
14 and transportation supervision, I don't  
15 know that they are all taped, but all our  
16 main line, anything that's running on the  
17 main line is certainly taped.

18 Q. Whether this -- whether it would  
19 be information just about the train  
20 coming into the yard or whether it  
21 involved --

22 A. Whatever's said.

23 Q. Whatever's said?

24 A. Whatever's said is taped.

25 Q. He's having trouble or not having

1 Mitchell

2 trouble --

3 A. Correct. If he's just asking for  
4 the weather or something like that, or  
5 the track location aches in the yard,  
6 it's all on there.

7 Q. And how long do they maintain  
8 these tapes or keep these tapes?

9 A. I don't know. That, I don't know.  
10 I forget.

11 Q. Would it be reasonable to assume  
12 that if there was a problem with the  
13 train as it's coming in to the yard and  
14 the conversations were being taped that  
15 the tape would be kept longer than if the  
16 train just came in and subsequently left  
17 without problems?

18 A. I would say that's probably a  
19 fair statement.

20 Q. Is there any policy about  
21 maintaining tapes if there was an  
22 incident involved, an accident or  
23 otherwise?

24 A. There obviously is a policy, but  
25 I don't know what that is.

1 Mitchell

2 Q. And that would not have come out  
3 of your office?

4 A. No, it would not.

5 Q. 644 is a statement given by the  
6 assistant train masters in Illinois; is  
7 that correct?

8 A. Cicero, yes, Mr. Curtis L. York.

9 Q. Do you know either of those  
10 gentlemen?

11 A. I do not.

12 Q. Can you tell from this who the  
13 statement was given to?

14 A. Yes, to L. R. Keen, FRA hazardous  
15 material inspector, steno, stenographer,  
16 Diane M. Cornwell.

17 Q. And attached to that at 651 is a  
18 memorandum from the yard master to Mr.  
19 Onacki, the terminal superintendent?

20 A. That's correct.

21 Q. 652 is a report of alarm, I take  
22 it, from the City of Elkhart?

23 A. That's what it appears to be.

24 Q. Fire department?

25 A. Yes.

1 Mitchell

2 Q. 653 through 666 appear to be  
3 newspaper clippings regarding the  
4 incident; is that a fair statement?

5 A. That's what they appear to be,  
6 through 57. Yes.

7 Q. How would these end up in your  
8 file or why would these end up in your  
9 file?

10 A. I don't know that.

11 Q. Just to be a little more  
12 specific, the clippings are from  
13 newspaper located out at Elkhart, they  
14 are not from the Wall Street Journal or  
15 the New York Times; is that correct?

16 A. That's correct.

17 Q. When a report like this comes in  
18 with all this various documentation,  
19 testimony, newspaper clippings, et  
20 cetera, who else would receive it in  
21 Philadelphia other than your office?

22 A. Well, it's according to what  
23 transpired. If it was just a spill, but  
24 anything to do with the release of a  
25 chemical we would have to get -- we would

1 Mitchell

2 get -- we would receive information on  
3 it, as obvious from all these reports. If  
4 it involved a cleanup, the environmental  
5 section would get it. The -- Mr.  
6 Hasselman, Mr. Swanson, maybe mechanical  
7 department, the head chief mechanical  
8 officer would have got it.

9 This particular incident,  
10 because of the seriousness of the  
11 evacuation and the 100 people, citizens  
12 treated and released or whatever, were  
13 treated, there is a good possibility that  
14 the law department would be involved in  
15 this.

16 Q. Since there might be possible  
17 litigation later on?

18 A. Sure.

19 Q. Yes.

20 A. Right off the top of my head, I  
21 can't think of anybody, public affairs,  
22 because they would have to handle the  
23 news media. And I can't think of anyone  
24 else right now.

25 Q. When an incident -- if you can

1 Mitchell

2 tell us -- an incident like this occurs  
3 where the fire department, police  
4 department, everybody's called in, OHM,  
5 whoever it is, who picks up the costs,  
6 who picks up the costs for these services  
7 once the incident is over?

8 A. What services are you referring  
9 to?

10 Q. Well, transportation services,  
11 ambulance services, et cetera, or just  
12 the cleanup of the area.

13 A. Well, there is --

14 Q. Evacuation?

15 A. Well, if we are talking about  
16 police, ambulance, that sort of thing,  
17 emergency response personnel, I don't  
18 know what if any costs Conrail picks up  
19 there, because we pay pretty high taxes  
20 and we are part of the community.

21 As far as the cleanup, Conrail  
22 would have to clean it up and then try to  
23 recover from -- as an example, going to  
24 these cases, we had a small leak and it  
25 was a shipper's responsibility because



1 Mitchell

2 they didn't tighten the valve for the  
3 sake of argument. We cleaned that up, we  
4 would bill the shipper, probably, and try  
5 to recover.

6 And, of course, if it was  
7 something that Conrail was responsible  
8 for, like that overriding coupler, then  
9 that would be our responsibility to  
10 handle the cleanup costs involved in that  
11 incident.

12 Q. I see. Does the National  
13 Transportation Safety Board charge you  
14 any fees or costs for their appearances  
15 at these -- or investigations at  
16 incidents such as this?

17 A. No.

18 Q. 667 through 673 are copies of  
19 statements given, is that correct? I  
20 think we have seen some of them before,  
21 but -- by Mr. Matthews, Mr. Cox --

22 A. Yes. Mr. -- through 76, actually.  
23 Mr. Koren, conductor.

24 Q. Koren. Okay. Called to the  
25 Department of Transportation, FRA people?

1 Mitchell

2 A. Yes, to Mr. King again.

3 Q. 76, 77 is a copy of a memorandum

4 dated February 5th from C. R. Bragg to R.

5 S. Onacki?

6 A. Yes.

7 Q. Conrail intercommunication?

8 A. Yes.

9 Q. 678 --

10 A. Is a copy of --

11 Q. Looks like a copy of 677?

12 A. Is a copy.

13 Q. 679 is a statement by Mr. Koren?

14 A. I think we have just seen that.

15 Q. Right. 682 is from the City of

16 Elkhart Fire Department again?

17 A. Yes.

18 Q. And then there is another

19 statement on 683 from Mr. Koren, another

20 copy of the fire -- City of Elkhart Fire

21 Department?

22 A. Yes.

23 Q. A report, unusual occurrence

24 report on page 685, would that be a

25 Conrail report?

1 Mitchell

2 A. Yes, it is. Or is it? Wait a  
3 minute. It appears -- I can't see a form  
4 number on it. I am going to say it is. It  
5 certainly appears to be. The format is  
6 the same as ours, anyway.

7 Q. 686 is a computer-generated  
8 report as to the chemical substance?

9 A. Yes.

10 Q. 87 appears to be the same?

11 A. Yes.

12 Q. 688 appears to be a report from  
13 the mechanical group?

14 A. I don't know -- it appears to be.  
15 I am not familiar with this type of  
16 cover. That's what it appears to be.

17 Q. 89, 90, through 94, are copies of  
18 various photographs, the originals of  
19 which we do not have here. Okay.

20 ( Whereupon, a letter dated  
21 June 11, 1985, to DOT from M. C. Mitchell  
22 was marked as Exhibit Number 13, for  
23 identification.)

24 BY MR. RUVOLO:

25 Q. Mr. Mitchell, I ask you to take a

1 Mitchell

2 look at Exhibit 13, for identification,  
3 tell us what you can about that.

4 A. It's a letter from myself to  
5 department of transportation dated June  
6 11th, 1985. It's a cover letter attached  
7 to which is a report of one hazardous  
8 material incident that occurred May 28th,  
9 1985, at Elkhart, Indiana.

10 Q. Involving a chemical substance  
11 known as Argon?

12 A. Yes.

13 Q. Do you know what Argon is, other  
14 than --

15 A. No, I do not.

16 Q. -- comparable to Freon or  
17 something of that nature?

18 A. I don't know.

19 Q. You don't know. And the report is  
20 dated June 11th, and bears your stamped  
21 signature?

22 A. Correct.

23 Q. 697. 98 and 99 appear to be  
24 drafts of the same report.

25 A. Yes.

1 Mitchell

2 Q. 700 and 701 appears to be a

3 hazardous material incident report,

4 interoffice --

5 A. I will call it a draft report.

6 Q. Draft report. Received by your

7 office on June 7th?

8 A. Correct.

9 Q. 702 is the hazardous -- or it's

10 movement information; is that correct?

11 A. Correct.

12 Q. As well as commodity?

13 A. Yes.

14 Q. 703, tell us who JRM is?

15 A. JRM is J. R. McNally, manager

16 hazardous material.

17 Q. In Philadelphia?

18 A. Correct.

19 Q. And it's a memo to him from H. R.

20 Elliott?

21 A. Correct.

22 Q. Do you know who he is?

23 A. Assistant manager of hazardous

24 material, Philadelphia.

25 Q. The other attachments similar to

1 Mitchell

2 what you have testified before, such as  
3 weigh bill and commodity description and  
4 incident reports are attachments that  
5 were received by your office or are forms  
6 that were received by your office in  
7 connection with the report?

8 A. Yes.

9 MR. ERMILIO: Can we go off the  
10 record for a minute?

11 (Whereupon, an off-the-record  
12 discussion was held.)

13 ( Whereupon, a letter dated  
14 June 27, 1985, to DOT from M. C. Mitchell  
15 was marked as Exhibit Number 14, for  
16 identification.)

17 BY MR. RUVOLO:

18 Q. I show you Exhibit Number 14, for  
19 identification, Mr. Mitchell, and ask you  
20 if you can run through that for us --

21 A. A cover letter from myself to  
22 Department of Transportation dated June  
23 27th, 1985, advising of a hazardous  
24 material incident that occurred June  
25 21st, 1985, at Elkhart, Indiana.

1 Mitchell

2 Q. There is a cc again to Mr.  
3 Phemister, as on most of these.

4 A. Yes.

5 Q. What would his function be upon  
6 receiving a report like this?

7 I mean, is this just to make  
8 him aware of what happened, or would he  
9 take some action of some sort?

10 A. I don't know what if any action  
11 Mr. Phemister would take. Mr. Phemister  
12 in his role as director of bureau of  
13 explosives for the Association of  
14 American Railroads had field people that  
15 also responded to hazardous material  
16 incidents. So, it was just an exchange of  
17 information and data, I guess, on the  
18 incidents that occurred. You would have  
19 his reports, you would also have ours.

20 Q. Okay. This is another one that --  
21 the remarks say empty, last contained  
22 hydrochloric acid. Is that correct,  
23 referring to item E on page 714?

24 A. Yes.

25 Q. And it was venting?

1 Mitchell

2 A. Correct.

3 Q. 716, 717, are drafts, I take it?

4 A. Yes.

5 Q. 18 is a hazardous material  
6 incident report received by your office  
7 on 21st of June?

8 A. Correct.

9 Q. And it's interoffice  
10 communication.

11 A. Yes.

12 Q. Again, the commodity code?

13 A. Yes. Item 13720.

14 Q. 722 is another report, 721, is  
15 another report received by your office on  
16 August 13th.

17 A. Correct.

18 Q. And then -- is that from the  
19 Chicago division?

20 A. Yes.

21 Q. Whereas the report on pages 718  
22 is from Elkhart?

23 A. Correct. That was an on-scene  
24 report, and this was followed up by a  
25 division report.



1 Mitchell

2 Q. Now, would this report, if you  
3 know, from the Chicago division, be based  
4 upon the first report from Elkhart by  
5 Hufnagel, or would one of the Chicago  
6 people have gone to the scene or  
7 investigated the incident himself?

8 A. Based on what happened in this  
9 particular incident, I doubt whether  
10 anyone from Chicago responded. They took  
11 the information provided by the local  
12 supervision. I am guessing that. I doubt  
13 very much whether they responded to this.

14 Q. Okay. And the procedure generally  
15 in an incident of this nature would be  
16 for Elkhart to report to either Chicago  
17 or Dearborn unless it was major, major?

18 A. Yes.

19 Q. And they, in turn, would report  
20 to you?

21 A. We would probably get a phone  
22 call letting us know it happened, and my  
23 people, McNally or Elliott, would have  
24 been on the phone, you know, finding out  
25 more details. That's you see a lot of

1 Mitchell

2 that, I told you it looked like Jim  
3 Harding's writing on a lot of these where  
4 he would scribble down some notes to keep  
5 abreast of it and could keep anybody who  
6 was interested in what was going on out  
7 there, you know, we would have some  
8 information on the incident.

9 Q. I get you.

10 ( Whereupon, a letter dated  
11 August 12, 1985, to DOT from M. C.  
12 Mitchell was marked as Exhibit Number 15,  
13 for identification.)

14 BY MR. RUVOLO:

15 Q. I show you Exhibit Number 15, for  
16 identification, Mr. Mitchell. I ask you  
17 to run through that one for us, if you  
18 would?

19 A. It's a memorandum from myself to  
20 the Department of Transportation dated  
21 August 12th, 1985, advising of a  
22 hazardous material incident that occurred  
23 August 3, 1985, at Elkhart. This has also  
24 been copied to Mr. Thomas Phemister, the  
25 director of bureau of explosives of the

1 Mitchell

2 AAR.

3 Q. Would this appear to be a tank  
4 car spill?

5 A. No, this was a tank car venting  
6 fumes.

7 Q. Hydrochloric acid?

8 A. Yes.

9 Q. It appears on page 726 that the  
10 repairs were made, the car was sent on  
11 its way?

12 A. Yes.

13 Q. By the Conrail department of --

14 A. No, it was Pennwalt was probably  
15 the shipper of the car. They responded  
16 and replaced the disc.

17 Q. Disk. There seems to be a mix-up  
18 of pages, but basically there is a draft  
19 of the same report?

20 A. Yes.

21 Q. And then there is the report  
22 received by your department in August  
23 9th, also a hazardous material report  
24 from Elkhart.

25 A. Yes.

1 Mitchell

2 Q. Attached chemical documents,  
3 movement information.

4 A. Yes.

5 Q. Report by the general foreman?

6 A. Yes.

7 Q. At Elkhart. Commodity code  
8 information?

9 A. Yes.

10 Q. And copies of the other reports.

11 A. Yes.

12 ( Whereupon, a letter dated  
13 August 27, 1986, to DOT from M. C.  
14 Mitchell was marked as Exhibit Number 16,  
15 for identification.)

16 BY MR. RUVOLO:

17 Q. I show you Exhibit 16, for  
18 identification, and ask if you can tell  
19 us about that one.

20 A. A cover letter advising  
21 Department of Transportation, dated  
22 August 27th, 1986, advising the DOT of  
23 one hazardous material incident that  
24 occurred on August 18th, 1986, at  
25 Elkhart. This is cc'd, but -- to the --

1 Mitchell

2 it's cc'd to the director of hazardous  
3 materials system.

4 Q. And who would that be --

5 A. I have no idea. I think this is  
6 the time that Mr. Phemister left the  
7 position at the AAR.

8 Q. It would still be the same  
9 organization?

10 A. Yes.

11 Q. All right.

12 A. This incident involves a tank car  
13 venting fumes, the commodity was, again,  
14 hydrochloric acid.

15 Q. Minor injuries, repairs by Mills  
16 Lab and sent on its way?

17 A. Yes.

18 Q. Anything in this report that's  
19 any different in the way of forms and  
20 reports than that you testified to just  
21 before?

22 A. The only thing that it has in it  
23 that the other reports did not contain  
24 was a personal injury report covering the  
25 injuries to the two employees involved.

1 Mitchell

2 That starts at number 13758.

3 Q. Fumes to the right eye, bruised  
4 left side, pain in the left shoulder;  
5 correct?

6 A. Yes. Mr. McIntosh and Mr.  
7 Bussard. The remainder of the report is  
8 dealing with those injuries.

9 Q. Regarding the personal injuries?

10 A. Yes.

11 ( Whereupon, a letter dated  
12 September 1, 1987, to DOT from M. C.  
13 Mitchell was marked as Exhibit Number 17,  
14 for identification.)

15 BY MR. RUVOLO:

16 Q. I show you Exhibit 17 and ask if  
17 you will tell us about that?

18 A. It's a cover memo from myself to  
19 DOT advising of two hazardous material  
20 incidents that occurred on August 23,  
21 1987, at Elkhart. Item or Exhibit 13, 765  
22 relates to a vapor and splash leak from a  
23 tank car containing hydrochloric acid. No  
24 injuries involved in this, the disc which  
25 was ruptured was replaced and the car was

1 Mitchell

2 okayed, forwarded to destination.

3 Q. Anything else unusual in this  
4 report, or anything unusual in this  
5 report?

6 A. No, other than the fact that you  
7 said there was two reports attached, and  
8 there is only one.

9 Q. Where was that, sir?

10 A. In the cover memo, it says,  
11 "Please find in duplicate two hazardous  
12 material incident reports." And I only  
13 see -- as far as I know, there is only  
14 information here on one.

15 Q. Somebody goof, or somebody goof  
16 in the copying?

17 A. I think perhaps your copier was  
18 getting a little tired.

19 Q. Okay.

20 ( Whereupon, a letter dated  
21 October 9, 1987 to, DOT from M. C.  
22 Mitchell was marked as Exhibit Number 18,  
23 for identification.)

24 BY MR. RUVOLO:

25 Q. Exhibit 18, Mr. Mitchell, if you

1 Mitchell

2 would.

3 A. Cover letter dated October 9th,  
4 1987, from myself to the Department of  
5 Transportation advising that attached  
6 were two hazardous material incident  
7 reports that occurred on October 1, 1987,  
8 at Elkhart. One incident involved a vapor  
9 leak from the top of the car due to a  
10 defective gasket, the car was repaired  
11 and okayed onto destination. That leak  
12 involved a chemical, Oleum, O-L-E-U-M.

13 Q. Draft copy attached?

14 A. Yes.

15 Q. Hazardous material report from  
16 Elkhart, interoffice?

17 A. Yes.

18 Q. Panafax copy involving the  
19 commodity?

20 A. Yes.

21 ( Whereupon, a letter dated  
22 August 26, 1988, to DOT, from M. C.  
23 Mitchell was marked as Exhibit Number 19,  
24 for identification.)

25 BY MR. RUVOLO:



1 Mitchell

2 Q. I show you Exhibit Number 19 and  
3 ask if you can tell us a little bit about  
4 that?

5 A. Cover letter from myself to the  
6 Department of Transportation dated August  
7 26th, 1988, attached are two hazardous  
8 material incidents reports that occurred  
9 on August 14th, 1988, at Elkhart,  
10 Indiana, one involved a tank car leaking  
11 a small amount of product from the liquid  
12 line. The car was repaired and okayed for  
13 shipment. The commodity involved was  
14 propylene, a flammable gas. Our report --  
15 my report to the DOT is dated August  
16 26th, 1988. It has additional --  
17 additionally this has a worksheet,  
18 Conrail unusual occurrence reports,  
19 reports that we have seen prior, on prior  
20 reports.

21 Q. Nothing unusual?

22 A. Nothing unusual. The one thing  
23 that shows up in this report that is not  
24 in your other is industry work order  
25 reports, but they are in-house reports

1 Mitchell

2 used to track movement of cars.

3 Q. When you say in-house, they are  
4 Conrail in-house?

5 A. Yes.

6 Q. Now, page 799 is a memorandum  
7 from R. J. Maloskey, M-A-L-O-S-K-E-Y?

8 A. What was that number again,  
9 counselor?

10 Q. 799, 13799?

11 A. Okay. Yes.

12 Q. To B. Barringer,

13 B-A-R-R-I-N-G-E-R. This was at your  
14 office, I take it from the Chicago  
15 division or the Lansing division to  
16 Philadelphia?

17 A. Chicago division, you were right.  
18 R. J. Maloskey who is division safety  
19 supervisor based in Lansing.

20 Q. There is a cc to N. P. Ferrone,  
21 F-E-R-R-O-N-E; tell me who he was?

22 A. Yes, he was the -- I am wondering  
23 if his title was changed at that time,  
24 but Mr. Maloskey reported to Mr. Ferrone.  
25 Ferrone was also a safety officer.

1 Mitchell

2 Q. Okay. Who was Barringer?

3 A. Barringer was involved with the  
4 hazardous -- he was assistant to Mr.  
5 McNally.

6 Q. In Philadelphia?

7 A. In Philadelphia. Yes.

8 ( Whereupon, a letter dated  
9 September 5, 1989, to DOT from M. C.  
10 Mitchell was marked as Exhibit Number 10,  
11 for identification.)

12 BY MR. RUVOLO:

13 Q. I show you Exhibit Number 20 and  
14 ask if you could tell us a little bit  
15 about that report, sir?

16 A. That's, again, a report from  
17 myself to Department of Transportation  
18 dated September 5th, 1989, advising that  
19 Conrail did experience a hazardous  
20 material incident occurring on August  
21 19th, 1989, at Elkhart, Indiana.

22 Q. And the chemical?

23 A. The chemical involved was a  
24 combustible liquid, NOS, not otherwise  
25 specified. And it was reported that there

1 Mitchell

2 was a smell or vapor, a strong odor  
3 issuing from the car initially at Elkhart  
4 yard. No leaks were found. The car was  
5 released for transportation and then on  
6 8/21/89 one of Conrail's crews, a YDEL-35  
7 reported fumes from the tank car, or  
8 observing fumes from the tank car. The  
9 car was isolated and inspected and no  
10 visible leakage noted.

11 Q. It was inspected by Tom Davis?

12 A. Tom Davis is the AAR bureau of  
13 explosives inspector.

14 Q. For whom?

15 A. The Association of American  
16 Railroads. We had to -- two employees  
17 report injury as a result of this leak on  
18 8/21. My report is dated September 5th,  
19 1989.

20 Q. And this was a tank car that --

21 A. Correct.

22 Q. And the next two pages are drafts  
23 of that --

24 A. Drafts and unusual occurrence  
25 reports. There is, again, a report of a

1 Mitchell

2 personal injury report covering the two  
3 employees that were claiming injury. .

4 Personal injury reports. The rest are  
5 reports that we have seen before.

6 There is a division -- Dearborn  
7 division unusual occurrence report, which  
8 is -- I believe that's the first time  
9 that showed up in any of the cases that  
10 we looked at. Memorandum in-house, called  
11 inter-departmental memorandum, David F.  
12 Lawrence, dated August 23rd, supervisor  
13 of safety, in that area to Mr. McNally,  
14 manager hazardous material describing the  
15 incident with a copy to me.

16 Q. Going back to page 820 and 821,  
17 the report was prepared by an GF Lynch,  
18 would that be general foreman?

19 A. I don't know. GF is general  
20 foreman.

21 Q. Yes.

22 A. I don't know Mr. Lynch.

23 Q. And that was sent to Elkhart to  
24 Dearborn, or would that be from Dearborn  
25 itself?

1 Mitchell

2 A. That's two different reports we  
3 are looking at, 821 and 820, you know,  
4 covering the -- as I indicated earlier,  
5 there was two reports of leak. What was  
6 the question again, whether these are  
7 what?

8 Q. Were these -- did these reports  
9 initiate out of Elkhart, to Dearborn or  
10 did they -- were these reports prepared  
11 in Dearborn?

12 A. I don't know where they were  
13 reported, or compiled. General foreman, I  
14 am guessing, would be at Elkhart.

15 Q. Now there is a report that  
16 appears on page 823, unusual occurrences,  
17 Dearborn division. This does not appear  
18 to be a pre-prepared report where you  
19 fill in the blanks; am I correct?

20 A. That's correct, yes.

21 Q. And it mentions the yard and then  
22 it mentions the Chicago line and the  
23 Michigan line. What is the reference to  
24 those and what is the importance of the  
25 reference to those?

1 Mitchell

2 A. I would say there is no -- the  
3 Chicago line and Michigan line reports  
4 have nothing at all to do with the  
5 Elkhart incident.

6 Q. Okay. These are just part of the  
7 overall reports from that division?

8 A. Unusual occurrence report for  
9 that division.

10 Q. Okay. So --

11 A. It's an overnight report, usually  
12 what it is, 24 hour report.

13 Q. 824 is an interoffice report?

14 A. Yes.

15 Q. From Chicago to Philadelphia?

16 A. From our supervisor in Chicago,  
17 yes, Mr. Lawrence to McNally.

18 Q. You received a copy of that  
19 report?

20 A. Yes, I did.

21 Q. The following pages seem to be  
22 copies of the previous reports that were  
23 attached to Mr. Lynch, and on page 833  
24 appears a letter from Conrail.

25 A. Yes.

1 Mitchell

2 Q. To the Pennwalt Corporation?

3 A. Yes.

4 Q. From George P. Turner. It says  
5 vice president for sales. Now, what was  
6 his role in this incident that he would  
7 --

8 A. Well, he was sales, which -- I  
9 don't know whether he was chemical sales  
10 in this position or prior to that. But he  
11 had a very -- a good and professional  
12 rapport with our shippers, and he worked  
13 with -- then towards '88 and '89 George  
14 got involved with the -- my hazardous  
15 material group and they worked together  
16 in trying to get the shippers to do a  
17 better job on packaging, you know, and  
18 inspecting their equipment and that sort  
19 of thing. So, it was just something else  
20 that we thought we could use or we  
21 thought we could use to, you know, to cut  
22 down on any release of the material.

23 Q. And you advised Pennwalt, for  
24 example, that --

25 A. Well, that was --



1 Mitchell

2 Q. -- to take better care --

3 A. That was one of George's  
4 functions, you know, to get him to write  
5 to them and advise them of what happened  
6 and, you know, "Let's work together to  
7 get these things corrected."

8 Q. And who was C.L. Yupco?

9 A. I beg your pardon?

10 Q. Carboned?

11 A. I have no idea who that is..

12 Q. What follows is a report by an  
13 inspector by the name of Thomas M. Davis?

14 A. Yes.

15 Q. And previously, if you look at  
16 the last page, 838, you identified Mr.  
17 Hasselman for us as being with Conrail  
18 and Mr. McNally, I believe, Mr. Swanson  
19 --

20 A. Yes, I have.

21 Q. And is G. N. Corcoran also with  
22 Conrail?

23 A. Yes, he is. At the time of this  
24 report, he was division general manager,  
25 as you can see him.

1 Mitchell

2 Q. In Philadelphia?

3 A. No. He was out at -- I believe he  
4 was stationed in Detroit, Michigan, at  
5 that time.

6 Q. Okay.

7 ( Whereupon, a letter dated  
8 December 18, 1989, to DOT from M. C.  
9 Mitchell was marked as Exhibit Number 21,  
10 for identification.)

11 BY MR. RUVOLO:

12 Q. I show you Exhibit 21 for  
13 identification, and ask if you could tell  
14 us a little bit about that, Mr. Mitchell?

15 A. It's a cover letter from myself  
16 to the Department of Transportation dated  
17 December 18th, 1989, advising we had a  
18 hazardous material incident occur at  
19 Elkhart, Indiana on December 4th, 1989.  
20 The chemical involved was hydrochloric  
21 acid. It was -- the spillage from the car  
22 as a result of loose bolts, B-O-L-T-S, on  
23 the cover of the liquid eduction pipe,  
24 according to what this says, E-D-U-C.  
25 Bolts were tightened and car released to

1 Mitchell

2 destination.

3 My report is to the DOT as  
4 dated December 18th, 1989, following is  
5 in-house reports that we have -- nothing  
6 unusual in this packet.

7 Q. Would it be part of your function  
8 if you, in many of the reports you  
9 received felt that a particular incident  
10 was the result of negligence or improper  
11 activity by one of the employees, would  
12 it be part of your responsibility to make  
13 any recommendations as to dismissal or  
14 otherwise --

15 A. Discipline?

16 Q. Or otherwise, discipline?

17 A. No, not -- no.

18 Q. We have just run through a series  
19 of approximately 21 reports. Do you  
20 recall any others that occurred or any  
21 other incidents that occurred in that  
22 period of time, say, between 1981 and '89  
23 that we did not cover today?

24 A. I don't recall.

25 Q. In your positions since 1973 or

1 Mitchell

2 even prior to that, do you recall any  
3 incidents that occurred or spillages that  
4 occurred involving carbon tetrachloride?

5 A. Do I recall? No, I don't  
6 recall.

7 Q. If other than with the cars  
8 themselves or with the Conrail  
9 operations, per se, there were safety  
10 concerns involving, say, the community in  
11 which the rail yard is located, would  
12 your department get involved in that at  
13 all?

14 A. We have been involved in it for  
15 some time, and making presentations to  
16 the emergency response groups and things  
17 like that, and even the city father, you  
18 know, or councilmen, educate them on the  
19 way we handle the transportation of  
20 hazardous material through -- well,  
21 system-wide and also through their  
22 community. And we have set up or we had  
23 set up, at least when I left, a good  
24 communications system with these  
25 emergency responders. We had a program in

1 Mitchell

2 place -- don't ask me the name of it --  
3 but to insure, you know, that, in fact,  
4 if we did have an incident, there would  
5 be immediate response and they would get  
6 right after it.

7 Q. Do you recall receiving during  
8 your tenure as safety director any  
9 correspondence from persons other than  
10 Conrail as to hazardous materials that  
11 were being shipped through Elkhart?

12 A. Counselor, that's a tough  
13 question. I can't recall that. I did a  
14 lot of reading in that job and I just  
15 could have, you know. I am -- I don't  
16 remember.

17 Q. Would it be -- in other words,  
18 what I am driving at is not something  
19 that people knew about you and sent it to  
20 you directly, but if a citizen was to  
21 complain about some operation at the  
22 railroad yards and Elkhart of spillage or  
23 --

24 A. We would get into it.

25 Q. Would that letter come to your --

1 Mitchell

2 A. It may. It may have. It may --  
3 you know, I, just like any other  
4 operation or corporation, I guess you  
5 like to handle things at a local level.  
6 So, if it was brought to the attention of  
7 some of the local supervision, I am sure  
8 they would try to handle it. You know,  
9 and if, in fact, it came up the ladder  
10 because it wasn't being handled, there is  
11 a chance that I might have got hold of it  
12 or it might have been sent to me, you  
13 know. And if any time we received any  
14 type of complaints on safety, we would  
15 investigate it.

16 MR. RUVOLO: I have no further  
17 questions.

18 (Whereupon, an off-the-record  
19 discussion was held.)

20 MR. CUNNINGHAM: We are going to  
21 take a ten-minute recess with the  
22 agreement of counsel. The witness has  
23 indicated he has a medical appointment at  
24 3:30. It's now quarter of two. I probably  
25 would ordinarily go longer than that. So

1 Mitchell

2 we will leave the deposition open with  
3 that understanding. So, we will  
4 accommodate the witness at this time.

5 MR. ERMILIO: I am going to  
6 object to that. A second ago you just  
7 said you had an hour. So, I don't  
8 understand why --

9 MR. CUNNINGHAM: Jim, I am not  
10 going to get jammed. When I say an hour,  
11 I mean an hour and a half.

12 MR. ERMILIO: You just told me  
13 an hour. Now on the record you are saying  
14 you would have been longer than an hour.

15 MR. CUNNINGHAM: Yes, I probably  
16 would go more than an hour. I don't want  
17 to inconvenience this witness, but I am  
18 not going to be jammed in on a matter  
19 this close. And we haven't taken a break  
20 and it's been two and a half hours. We  
21 need a ten minute break. Should get  
22 lunch, really.

23 MR. ERMILIO: The witness and  
24 our stenographer said they are willing to  
25 continue going without taking a break.

1 Mitchell

2 Both our court reporter and our witness  
3 have said they are willing to continue  
4 without a break, to accommodate you.

5 MR. CUNNINGHAM: That's not the  
6 issue. The issue is whether I can  
7 complete by the time the witness has to  
8 leave in ample time to get there. I am  
9 trying to do the witness a favor. But I  
10 am not --

11 THE WITNESS: How would it suit  
12 you if I were to call the doctor's office  
13 and see if I couldn't get it set back a  
14 little bit?

15 MR. CUNNINGHAM: If that's what  
16 you want to do.

17 THE WITNESS: That's all right  
18 with me. I am here to get this thing over  
19 with, pal. I don't want to be back --

20 MR. CUNNINGHAM: Sure.

21 THE WITNESS: You can take all  
22 night, for all I care. Let's do it.

23 MR. CUNNINGHAM: Let's take a  
24 little break, then.

25 ( Whereupon, a short recess was



1 Mitchell

2 ( Whereupon, a short recess was  
3 taken.)

4 ( Whereupon, a luncheon recess  
5 was taken.)

6 BY MR. CUNNINGHAM:

7 Q. Mr. Mitchell, I am Pierce  
8 Cunningham. I represent Penn Central  
9 Corporation. I have some follow-up  
10 questions for you. If there are any  
11 questions that I don't make clear, just  
12 let me know, and I will try to straighten  
13 out the question.

14 First of all, it's my  
15 understanding that you have never worked  
16 at the Elkhart yard during your career  
17 with the railroad, either Conrail or Penn  
18 Central; is that correct?

19 A. That's correct.

20 Q. And that you are now retired from  
21 Conrail and that during the 70's were in  
22 a position of responsibility with Conrail  
23 so as to put you in touch with the  
24 Elkhart yard by means of reports of  
25 hazardous spills from that yard; is that

1 Mitchell

2 correct?

3 A. Give me the dates again, what  
4 time frame?

5 Q. '73 to '90?

6 A. In that time frame, yes.

7 Q. Other than receiving reports from  
8 the Elkhart yard, did you have any other  
9 connection with that yard?

10 A. Yes, I've visited Elkhart during  
11 safety tours or safety presentations,  
12 that sort of thing.

13 Q. And what was the purpose of the  
14 visit other than attending seminars for  
15 safety?

16 A. Walk through inspection of the  
17 operation for safety.

18 Q. And when was that?

19 A. Specifically, I couldn't tell  
20 you.

21 Q. You are retired from Conrail, and  
22 as I understand it, retired in 1990?

23 A. Correct.

24 Q. And at that time you were  
25 director of safety for the entire Conrail

1 Mitchell

2 system; is that correct?

3 A. Correct.

4 Q. Did you have a secretary that  
5 took your dictation?

6 A. Yes, I did.

7 Q. What was her name or his name?

8 A. At what time period?

9 Q. When you retired.

10 A. I forget the young lady's name.  
11 We had to clarify that. We had quite a  
12 turnover in secretaries there towards the  
13 end. My secretary's job, at any rate, was  
14 bid and bump, so it was based on  
15 seniority. If someone was displaced with  
16 more seniority, they could bump in on the  
17 job. They also had the option of bidding  
18 on other jobs, I am sure you are familiar  
19 with that. So, at the end there we had  
20 quite a turnover in secretarial help.

21 Q. What were the names of some of  
22 the secretaries you had?

23 A. Susan McGurck was the secretary  
24 for the majority of my time in as  
25 director.

1 Mitchell

2 Q. And is she still with Conrail?

3 A. Yes, she is, to my knowledge.

4 Q. You have given testimony by means  
5 of reviewing some of the exhibits that  
6 were presented, namely, Exhibits 1  
7 through 20. Most of those containing what  
8 are known as 5800 forms; isn't that  
9 right?

10 A. I don't know. I don't know what  
11 the form number is.

12 Q. Well, if you will take a look,  
13 for example, at Exhibit 21 on the second  
14 page at the bottom, it has a number --

15 A. DOJS. This is the form.

16 Q. That's a 3800, isn't it 5800;  
17 isn't it?

18 A. Correct.

19 Q. As I understand it, the 5800 is  
20 not something that Conrail voluntarily  
21 does, but is a requirement of a federal  
22 agency; is that right?

23 A. That's correct.

24 Q. And the agency involved is the  
25 Department of Transportation; is that

1 Mitchell

2 correct?

3 A. That's correct.

4 Q. Now, in your job as the director  
5 of safety, in addition to the requirement  
6 that Conrail had of reporting hazardous  
7 material incidents, was there any other  
8 agency that you had to report to at all?

9 A. My office, or myself?

10 Q. Yes.

11 A. Yes. The Department of  
12 Transportation, the FRA, Federal Railway  
13 Administration. And that would be to  
14 report, again, employee casualties,  
15 trespasser casualties and grade crossing  
16 accidents.

17 Q. But with respect to hazardous  
18 materials, the only federal agency, as I  
19 understand it, was the Department of  
20 Transportation?

21 A. Yes.

22 Q. Were there any other forms that  
23 you can recall that had to be filed with  
24 that federal agency regarding hazardous  
25 spills?

1 Mitchell

2 A. Not that I can recall.

3 Q. Did you have any requirements  
4 calling for submission of reports to  
5 state governments?

6 A. I believe we did. I believe we  
7 did. I am not positive on that.

8 Q. So that at Elkhart, which is  
9 Indiana, you may have had responsibility  
10 for filing reports with them under  
11 certain circumstances, is that what you  
12 are saying?

13 A. That could be.

14 Q. Do you recall any of those kind  
15 of forms?

16 A. I don't recall that, no.

17 Q. Okay. Other than the materials  
18 that you have been called upon to produce  
19 through Conrail's attorneys, do you know  
20 of any other documents that were in your  
21 office at the time that would have  
22 meaning with regard to this case?

23 A. No, I don't.

24 Q. Tell me a little about the FRA, I  
25 think you mentioned them.

1 Mitchell

2 A. Yes.

3 Q. Can you tell me --

4 A. Well, it's a department or an arm  
5 of the Department of Transportation, and  
6 they develop rules and regulations for  
7 train traffic, and they develop it. We  
8 have to comply. And they have inspectors  
9 to come out and insure their compliance.  
10 That's kind of basic, but that's  
11 basically what they do.

12 Q. But it's my understanding -- and  
13 correct me if I am wrong -- that that  
14 agency does not concern itself with  
15 hazardous spills at all or from the area  
16 of accidents?

17 A. Yes. I -- they would respond, FRA  
18 -- if we had a major accident involving  
19 hazardous material, you could expect to  
20 see an FRA inspector out there, you know.  
21 I don't know that they had to respond,  
22 but they were there.

23 Q. That's your knowledge of their  
24 involvement; beyond that, you don't have  
25 any knowledge of what they did?

1 Mitchell

2 A. What they did in regard to  
3 what?

4 Q. Hazardous spills?

5 A. I am trying to -- no, I don't. I  
6 am not sure.

7 Q. Okay. But you believe it is a  
8 part of and within the Department of  
9 Transportation?

10 A. Yes.

11 Q. Okay. Did your job entail your  
12 dealing with that department other than  
13 through some reporting to them?

14 A. I -- we met with them through the  
15 AAR occasionally. We -- I forget what his  
16 title was, I guess director of the AFARA.  
17 At that time it was Joe Walsh who held  
18 sway in Washington, and he would meet  
19 with the safety section of the AAR  
20 Association of American Railroads, and  
21 periodically -- we would meet with the  
22 AAR on a bi-monthly or quarterly basis,  
23 and I would say at least once a year the  
24 FRA would show up to update us on any new  
25 regulation considerations or



1 Mitchell

2 interpretations, that sort of thing, to  
3 make a presentation. And they were  
4 active, also, when we had our annual  
5 meeting. Once a year we would meet with  
6 -- for about three days and they would  
7 make, usually, be in attendance at those  
8 meetings.

9 Q. Now, the AAR is a -- is not a  
10 federal agency but rather an association  
11 made up of representatives of all the  
12 railroads; is that right?

13 A. Well, it -- yes, it's subsidized  
14 by the railroads, yes.

15 Q. And what is its purpose?

16 A. It's a -- what's the term --  
17 go-between -- you know, a lobbyist group,  
18 I guess you would want to call them, but  
19 they keep an eye on anything that would  
20 affect the industry. It's actually set up  
21 like an organization, like a railroad  
22 corporation. They have different  
23 departments or different segments, and  
24 they work with us on compliance with the  
25 federal regulations, keeping us abreast

1 Mitchell

2 of what's going on, and I am sure it's a  
3 lobbying group, also.

4 Q. What about the bureau of  
5 explosives, what connection has that got?

6 A. That's an arm of the AAR.

7 Q. It is?

8 A. Yes.

9 Q. Again, it's not a federal agency?

10 A. No.

11 Q. And Thomas --

12 A. Phemister.

13 Q. -- Phemister would have been in  
14 that group, or responsible --

15 A. He headed that group for a while.  
16 He has since left. I don't know where  
17 he's at or what he's doing.

18 Q. What's the history of that  
19 organization; I mean --

20 A. I don't know. It was on board  
21 when I came on board, I believe. And  
22 their interests as in, of course,  
23 transport and handling, haz/mat, they had  
24 field people that would investigate  
25 incidents, and as I am sure you have

1 Mitchell

2 reviewed some of those reports that I  
3 went over this morning, and they have  
4 field containment reports furnished by  
5 the FRA field inspectors to Mr. Phemister  
6 or his office.

7 Q. And I think you indicated that  
8 Mr. Young was your predecessor in the job  
9 that you took in 1978?

10 A. No.

11 Q. Is that wrong?

12 A. No, he was not. That's wrong.

13 Q. What was he?

14 A. He was -- I took his job in 1974,  
15 approximately there. He was manager of  
16 safety, actually controlled the safety  
17 field people, which I was one of at the  
18 -- you know, in '73. I hired --

19 Q. Back to the bureau of explosives  
20 one more time, did you have any  
21 connection with them other than just  
22 sending copies to Phemister?

23 A. No, not really. My manager of  
24 hazardous material really dealt with him.  
25 I mean, not that I didn't know Tom

1 Mitchell

2 Phemister, but I didn't deal with him  
3 like my manager would. He would deal with  
4 him on a regular basis. And I was a step  
5 removed from that.

6 Q. I am just curious as to why they  
7 would want to have these forms? There  
8 was no federal requirement for that, was  
9 there?

10 A. No. I believe we -- I don't know  
11 why. I mean, keep in mind, counselor,  
12 that a lot of these procedures were set  
13 up before I took office, and it was just  
14 a continuation of what was going on prior  
15 to me stepping into the shoes. And why we  
16 -- I guess it was just an information  
17 exchange, you know.

18 Q. I think you are right. I think  
19 that historically they may have been  
20 there and took the place of what is now  
21 the Department of Transportation in the  
22 60's; is that your understanding?

23 A. Could be. Could be. You know, I  
24 -- in the 60's I had no visions of being  
25 in management.

1 Mitchell

2 Q. In the 60's, you were working for  
3 Penn Central but had no responsibilities,  
4 as I understand it, with hazardous  
5 materials whatsoever, you were --

6 A. Not at all.

7 Q. -- climbing up the ladder, is  
8 that right?

9 A. Well, yes.

10 Q. I am curious, however, as to what  
11 the procedures may have been between 1965  
12 and '70, if you would know, for incidents  
13 such as you have been talking about in  
14 Exhibits 1 through 20 today?

15 A. I don't know.

16 Q. Okay. Do you have any idea?

17 A. No. The only thing I can tell you  
18 is that during that time I was involved  
19 with the handling of the cars. And the  
20 only thing I remember is if you had a  
21 leak, you reported it. If you had an  
22 incident with a car leaking, no matter  
23 from what cause, you reported it.

24 We also were -- received  
25 training in the transport and handling of

1 Mitchell

2 hazardous material, and we also had what  
3 we used to call the red book, it was an  
4 in-house publication, it was actually a  
5 condensed version of the law and  
6 requirements. And I believe the form  
7 number -- and it's probably still in  
8 effect, is CT 225, that was issued to all  
9 transportation employees.

10 Q. What time period are you  
11 referring to with respect to your  
12 previous answer?

13 A. In other words, when was I first  
14 aware of reporting to government and  
15 things of that nature?

16 Q. Yes.

17 A. Probably aware of it when I took  
18 office as safety superintendent eastern  
19 region. That was 1973.

20 Q. And I guess I am referring to a  
21 period of time when you indicated you did  
22 work sometimes with leaking tank cars and  
23 you knew about the obligation to report  
24 --

25 A. Prior to '73?

1 Mitchell

2 Q. Yes. I am interested in, really,  
3 a period between 1965 and 1970.

4 A. There was none -- I didn't know  
5 anything about reporting other than the  
6 fact that if I was a conductor or  
7 brakeman on a train and we had a car that  
8 was leaking hazardous material in our  
9 train, it was our responsibility to turn  
10 it in immediately.

11 Q. And that was during that period  
12 of time; is that right?

13 A. Yes.

14 Q. And what was considered hazardous  
15 material during those times; do you  
16 know?

17 A. For the most part, any car that  
18 was placarded.

19 Q. Placard existed during that  
20 period of time?

21 A. Yes.

22 Q. What about carbon tetrachloride,  
23 in your job as director of safety, did  
24 you ever have occasion to learn about  
25 that chemical?

1 Mitchell

2 A. Learn about it? No, not really.

3 I've never had any instruction on  
4 chemicals, per se.

5 Q. All right. Have you ever heard of  
6 carbon tetrachloride?

7 A. Yes, I have.

8 Q. In what connection have you heard  
9 of that?

10 A. All I know is that I heard the  
11 name of the chemical. I am trying to  
12 remember what, in fact, it's used for,  
13 and I am not -- I don't --

14 Q. What about a class of chemicals  
15 known as chlorinated solvents; have you  
16 had occasion to learn or know about that  
17 group of chemicals?

18 A. No.

19 Q. Do you know whether carbon  
20 tetrachloride or chlorinated solvents of  
21 any kind were used by Penn Central during  
22 the years that you worked for them, which  
23 I believe started in 1953, until they  
24 became Conrail in 1976 or 1977?

25 A. No. I wouldn't be involved in any



1 Mitchell

2 cleaning process or anything like that.

3 Q. All right.

4 A. Or I would not have been.

5 Q. Right. So, to your knowledge,  
6 those kinds of chemicals were not used?

7 A. I don't know that they were or  
8 they weren't. I am not -- I don't know  
9 that.

10 Q. You had no exposure to them at  
11 Camden; is that where you were working  
12 during the time that I am speaking of?

13 A. Yes. The answer to your question  
14 is no, I would not have had any contact  
15 with any chemicals of that nature.

16 Q. Have you heard about the use of  
17 carbon tetrachloride or chlorinated  
18 solvents by Penn Central or Conrail?

19 A. If I did, it was -- I don't  
20 recall. I don't recall that.

21 Q. Have you heard about any spills  
22 at the Elkhart yard at any time that have  
23 involved chlorinated solvents including  
24 carbon tetrachloride?

25 A. I don't recall the commodities.

1 Mitchell

2 Q. Okay. Let's go back, again, to  
3 your understanding that it was required  
4 of employees at Penn Central during the  
5 60's, I believe you said, to notify the  
6 company --

7 A. Supervision.

8 Q. -- all right, supervision -- of  
9 spills of hazardous materials?

10 A. Yes.

11 Q. Can we talk about that for a  
12 minute?

13 A. Sure.

14 Q. And if you knew of such a spill,  
15 how did you learn the rule that it had to  
16 be turned in to the supervision; was  
17 there --

18 A. Through classes. Wherever -- it's  
19 a requirement or it was a requirement, at  
20 least, on an annual basis that you  
21 receive instruction in the operating  
22 rules, and it was done again on an annual  
23 basis usually by the road foreman of  
24 engines or train master or operating  
25 rules personnel. And they would review

1 Mitchell

2 the operating rules with you. And as part  
3 of that review, they would review the  
4 requirements that would -- we would be  
5 governed by, we being train men,  
6 conductors, that sort of workers as it  
7 relates to hazardous material.

8 Q. Naturally, in those days there  
9 wasn't as much emphasis or concern about  
10 environmental problems, was there?

11 A. No, there was not.

12 Q. Okay.

13 A. In my opinion.

14 Q. Right. And I think you testified  
15 that during the last ten years there has  
16 been more of an emphasis on -- and a  
17 concern for the environment; is that  
18 right?

19 A. Well, again, counselor, let me  
20 just say that that is my opinion. And  
21 also when I say that, I just don't mean  
22 on the railroad. I mean everyone, you  
23 know.

24 Q. But that would also be true at  
25 the rail yard, would it not?

1 Mitchell

2 A. Yes.

3 Q. That is not to say, is it, that  
4 there was any laxity on the part of Penn  
5 Central during the 60's that you are  
6 aware of?

7 A. Not that I am aware of, no.

8 Q. Did it seem to have rules with  
9 regard to the use of hazardous materials?

10 A. The use of?

11 Q. Yes.

12 A. From a safety standpoint, we had  
13 rules that -- I know that they -- we used  
14 different chemicals, oils, solvents,  
15 things of that nature. What they are  
16 specifically, I can't tell you that. But  
17 we had safety rules that would govern the  
18 handling of those materials.

19 Q. And were they embodied in any  
20 particular book or anything?

21 A. Yes, they were in our safety rule  
22 books.

23 Q. Was there a title for that?

24 A. Yes. Safety rules, and there was  
25 a manual for each part, so to speak. We

1 Mitchell  
2 had one for the transportation people.  
3 Now, their book didn't contain much on  
4 hazardous material or any type of  
5 chemical, because they didn't involve  
6 themselves with chemicals, but our  
7 mechanical, our MOV people, would be --  
8 and MMW, our engineering group, they  
9 would be, you know, subject to that type  
10 of exposure with cleaners and solvents  
11 and oils and et cetera.

12 Q. That was a system-wide method of  
13 informing employees of safety rules; is  
14 that right?

15 A. Yes.

16 Q. Are you familiar with a form that  
17 was used by Penn Central at that time  
18 called an HM 10011?

19 A. No, I don't remember -- the -- I  
20 don't remember that form.

21 Q. Well, you indicated that the  
22 supervision was to be notified of any  
23 such spill. Who would that be  
24 specifically, the terminal  
25 superintendent?

1 Mitchell

2 A. It would be -- not necessarily.

3 Well, certainly he will find out about  
4 it. Who would we notify as a train man or  
5 conductor?

6 Q. Right.

7 A. It would be depending on where  
8 you were at the time. If you were in the  
9 yard, yard complex or within yard limits,  
10 you would notify the yard master, and  
11 they would take it from there.

12 If you were on, say, a train,  
13 you are out of the yard territory, you  
14 are out on the main line or somewhere or  
15 out in the boondocks and this happened,  
16 you would call the dispatcher and advise  
17 him that you had this problem.

18 Q. And was there a dispatcher for.  
19 every yard?

20 A. Well, the dispatchers were hooked  
21 into the yard, but the yard master  
22 controlled them. You didn't have to go to  
23 the dispatcher. The dispatcher controlled  
24 movements out of the yard. The yard  
25 master controlled everything that was

1 Mitchell

2 going on in the yard territory.

3 Q. So, the yard master would know of  
4 a significant spill, is that right?

5 A. Yes, he would, or he should have.

6 Q. For example, we are speaking now  
7 of the period 1965 to '70, you were  
8 working at Penn Central at that time in  
9 Camden, as I understand it; is that  
10 right?

11 A. Well, in '73 I went into  
12 management.

13 Q. Well, I am talking about 1965 to  
14 1970.

15 A. Yes.

16 Q. Okay. So, you were aware of the  
17 rules at that time, were you not?

18 A. What rules? The rule for  
19 notification?

20 Q. Yes.

21 A. Yes, sure.

22 Q. And it's your understanding and  
23 recollection that those in supervision  
24 who would learn of this would be the yard  
25 master --

1 Mitchell

2 A. Initially -- he would be the  
3 first. That would be our call.

4 Q. Okay. So that at Camden you would  
5 notify first yard master and then the  
6 yard master would notify a dispatcher;  
7 is that right?

8 A. You would probably notify not  
9 only the dispatcher, terminal  
10 superintendent if -- whatever the chain  
11 of command was. He would take it to the  
12 next level.

13 Q. So, the yard master would take it  
14 up to the terminal superintendent?

15 A. If that's what his title was,  
16 yes.

17 Q. But that would certainly have  
18 occurred with regard to a placarded  
19 significant leak of material from a tank  
20 car of hazardous material?

21 A. Well, hazardous material is  
22 shipped in other than just tanks. You  
23 know, you can ship it in hopper, box car,  
24 et cetera.

25 Q. Sure.



1 Mitchell

2 A. The rule of thumb is if you have  
3 got a leak -- we didn't go by volume --  
4 if you had a leak, vapor, anything, you  
5 call the yard master or the dispatcher  
6 and advise him of that.

7 Q. And that was true at all the  
8 yards in the Penn Central system?

9 A. That's correct.

10 Q. The reason I ask you this is that  
11 there has been an allegation that during  
12 the period 1965 to 1970, '66 to '68,  
13 really, a tank car containing carbon  
14 tetrachloride was damaged in the  
15 coupling, a hole was put in the front of  
16 the tank car, and its contents leaked  
17 into the ground, and it's my  
18 understanding from listening to you that  
19 certainly the yard master would have been  
20 informed of that as well as a  
21 dispatcher; is that right?

22 A. Not necessarily the dispatcher. I  
23 am guessing when I say that the yard  
24 master --

25 Q. Certainly the yard master?

1 Mitchell

2 A. I would almost have to say yes,  
3 because if they had a real bad problem,  
4 any type of problem, not just hazardous  
5 material -- dispatcher's controlling  
6 movement into that yard. So, I would just  
7 have to almost bet my paycheck that if  
8 they had an incident, the yard master  
9 would have notified the dispatcher or the  
10 movement desk, same --

11 Q. Who is the movement --

12 A. Movement desk is -- oversees the  
13 dispatchers, but they go up through the  
14 chain of command.

15 Q. I see. Do you recall a telephone  
16 number as being part of this rule on a  
17 form H M 1001 that had to be called in  
18 the event of a spill?

19 A. I do not.

20 Q. If I had that, I might show it to  
21 you and you would recall it --

22 A. I might.

23 Q. -- but I don't have it with me.

24 At any rate, you have a general  
25 understanding of the reporting of such

1 Mitchell

2 incidents, and was it generally the  
3 practice in those days, 1965 to '70, to  
4 also notify police and fire under certain  
5 circumstances?

6 A. I don't know. That wouldn't have  
7 been anything -- and I am going back to  
8 when I was in train service -- you know  
9 --

10 Q. Yes?

11 A. -- anything -- I can't imagine  
12 the crew, train man, conductor, calling  
13 the police, you know, unless we had a  
14 fire, and by that time they would  
15 probably already be there.

16 I don't know what action was  
17 required or mandated by that yard master,  
18 dispatcher, or what their policy was at  
19 the -- at that time. All I can talk about  
20 is what it was when I left service.

21 Q. All right.

22 A. You know.

23 Q. What kind of paper work would you  
24 have anticipated in those days as  
25 accompanying such an incident or spill?

1 Mitchell

2 A. I am not sure whether we had --  
3 we as a crew member had to fill out  
4 anything. I don't remember that. All we  
5 were required to do was make  
6 notification.

7 Q. And so you really don't know what  
8 paper work --

9 A. I don't know. No.

10 Q. Have you had occasion in your job  
11 that you left in 1990 to have ever gone  
12 back and reviewed records for the past?

13 A. No. Never.

14 Q. Okay. Do you have any idea, Mr.  
15 Mitchell, how long Conrail keeps records  
16 such as we have been talking about here  
17 in Exhibits 1 through 20?

18 A. Whatever is required by law is  
19 what we keep.

20 Q. Do you --

21 A. I forget what that is. I don't  
22 know, what is it, three years or five  
23 years, whatever it happens to be? I do  
24 forget. There was a stipulation. And I am  
25 sure there was an in-house rule where we

1 Mitchell

2 would have to, you know, maintain our  
3 records for so long, but I just don't  
4 recall what that number was.

5 Q. Now, going back -- and this is,  
6 again, your memory, and you may not have  
7 a recollection of this -- but talking  
8 about predecessors in your job, so as to  
9 go back to the time period I am talking  
10 about, 1965 to '70 under Penn Central, do  
11 you have any idea who at Penn Central  
12 would have had the responsibility in  
13 Philadelphia of receiving records that  
14 would have been generated on a spill at  
15 Elkhart in those days?

16 A. I would just be guessing, if I  
17 guessed.

18 Q. I would appreciate even that at  
19 this point.

20 A. The only -- the person that goes  
21 back as far as I know on managing haz/mat  
22 for the railroad, Penn Central, at any  
23 rate --

24 Q. Yes, talking about Penn Central.

25 A. -- Jess Dehl. Jess Dehl.

1 Mitchell

2 Q. Is he still alive?

3 A. I don't know. I don't know. The  
4 last time I saw him was maybe six years  
5 ago. That was just in passing.

6 Q. When did he retire from the  
7 system?

8 A. Pardon?

9 Q. When did he retire?

10 A. When?

11 Q. Yes.

12 A. Oh, I know when he retired. He  
13 retired in 1978.

14 Q. So, it would have been shortly  
15 after --

16 A. Shortly after I took office, he  
17 retired. I will never forget that. I was  
18 kind of left out in the cold.

19 Q. And what was his job?

20 A. His title was manager of  
21 hazardous material. And he was the -- one  
22 of my staff that handled all these  
23 reports and the information coming in.

24 Q. And so when -- before you came  
25 there, was he head of the department?

1 Mitchell

2 A. I -- just this section. I don't  
3 know what his title was, or if it was the  
4 same. But as far as I know, he was the  
5 haz/mat man.

6 Q. All right. And how long had he  
7 been there, do you know?

8 A. You mean on the railroad, or --

9 Q. No, in that type of --

10 A. I don't really know. All I know  
11 is that when I come into management in  
12 '73 he was not in my department, but he  
13 still had that function. That was his  
14 function, haz/mat. So, at least '73 to  
15 '78. And I am sure quite a while before  
16 '73, but I don't know how long.

17 Q. So, he may have been the head of  
18 that department for Penn Central during  
19 the time I am talking about, but you are  
20 not certain?

21 A. That's correct. And don't be  
22 fooled by department. I think it was a  
23 one man show.

24 Q. Yes. Okay. But it would have been  
25 the --

1 Mitchell

2 A. The point of contact, yes.

3 Q. -- the point of contact for  
4 hazardous materials; is that right?

5 A. Yes. Now, I don't know what he  
6 was required to handle the reports at  
7 that time, if they were, in fact,  
8 required, you know. That might have went  
9 through a transportation function, but I  
10 don't know.

11 Q. At least now we have that, we  
12 could ask him, assuming he's alive?

13 A. If you can find him.

14 Q. And you don't know who might have  
15 been his predecessor, do you?

16 A. I -- probably if somebody said,  
17 "Hey, do you remember," then I would  
18 remember. But right off the top of my  
19 head I can't give you that name.

20 Q. Do you recognize any other names  
21 that might have been connected with that  
22 department?

23 A. Prior to him?

24 Q. Yes.

25 A. No.



1 Mitchell

2 Q. It's my understanding that you  
3 have then not seen any files or any  
4 correspondence to or from previous  
5 managers of -- if that's what they are  
6 called -- hazardous materials such as  
7 this gentleman --

8 A. Oh, no. No. Not prior to, no.

9 Q. But you did have some contact  
10 with Dehl?

11 A. Yes. When I moved into management  
12 in 1973, just very minimal, okay, then  
13 when I moved into 1974 I moved in as  
14 general superintendent, then Dehl was on  
15 the next floor.

16 Q. Right.

17 A. And I was, you know, overseeing  
18 these field people in the safety  
19 function. Deal was still not in our -- in  
20 the safety group. He was in operating  
21 rules. And then I forget when he got  
22 moved over to safety.

23 Q. Now, in your jobs, I think you  
24 said between '73 and '74, you were  
25 superintendent of safety, and then from

1 Mitchell

2 '74 to '78, general supervisor --

3 A. General superintendent.

4 Q. General superintendent safety.

5 A. Uh-huh.

6 Q. Did that also entail hazardous  
7 materials?

8 A. Not so much when I was -- no.

9 When I was up -- up until '78, no.

10 Q. Was Dehl still there then?

11 A. Dehl was there, but he reported  
12 to director of safety, Bill Hedderman, as  
13 I did. I reported to Mr. Hedderman, also.  
14 So --

15 Q. That's H-E --

16 A. Not that we didn't -- we worked  
17 together, but it wasn't -- we didn't do a  
18 heck of a lot of work together.

19 Q. You mentioned Hedderman before,  
20 didn't you?

21 A. I believe I gave --

22 Q. Yes. And is he -- he's retired,  
23 isn't he?

24 A. Yes, he is.

25 Q. Do you know where he lives?

1 Mitchell

2 A. He lives in New York State.

3 That's the best I can do for you.

4 Q. Okay. And again, what was his  
5 function, what did he --

6 A. He was director of safety, and he  
7 had -- that was his title. He had safety  
8 and hazardous material, and that was it.

9 Q. So, Dehl reported to him?

10 A. Yes.

11 Q. And that's why you would have  
12 been sort of out of the loop with regard  
13 to hazardous material, you would deal  
14 more with safety, workers' compensation?

15 A. Correct.

16 Q. That sort of thing; is that  
17 right?

18 A. Not worker's comp, but yes,  
19 safety. Safety-related issues.

20 Q. And who did Hedderman report to?

21 A. He reported to Jack Rathvon, who  
22 was director of operating rules.

23 Q. Is he still alive?

24 A. No, he died.

25 Q. We have records, some of which we

1 Mitchell

2 have covered beginning in 1981, and there  
3 is also a group that we haven't talked  
4 about yet from 1971 to the present, I  
5 believe, or is it '77?

6 MR. ERMILIO: I think it was  
7 '77.

8 MR. CUNNINGHAM: '77.

9 BY MR. CUNNINGHAM:

10 Q. Is there any reason why you can  
11 think of why the records didn't exist  
12 before that, that is, before 1977?

13 A. What records?

14 Q. Well, these records here that we  
15 are talking about, 5800's, was it because  
16 there wasn't a reporting form at that  
17 time?

18 A. I don't know.

19 Q. No requirement with the  
20 government?

21 A. It could have been, I don't know.

22 Q. When do you recall that the forms  
23 began to take over your life, so to  
24 speak, in the -- do you remember what  
25 years those were?

1 Mitchell

2 A. Well, the forms as they relate to  
3 hazardous -- the requirements of the DOT  
4 as far as reporting hazardous material  
5 incidents weren't really that great. You  
6 know, you got a two-page form there. And  
7 I don't know when that was placed in  
8 effect initially. And I really had not a  
9 lot to do with that until I became  
10 director. And then I had to -- my name  
11 went on the bottom of the sheet.

12 Q. So, your knowledge of the forms  
13 really would begin, at best, around 1976  
14 or so, a couple years, perhaps, before  
15 you became director?

16 A. Yes. But I -- very minimal  
17 involvement with hazardous materials in  
18 those early years.

19 Q. Was that because there was no  
20 government enforcement at that time?

21 A. No.

22 Q. Why --

23 A. Just because, again, you are  
24 going back more than ten years, and there  
25 really wasn't that much emphasis. I mean,

1 Mitchell

2 you had a spill, you reported it, and  
3 that was it.

4 Q. All right. I am interested, too,  
5 in the change-over from Penn Central to  
6 Conrail; do you recall those days?

7 A. Yes.

8 Q. Let's talk about 1976, is that  
9 your best recollection?

10 A. April 1, '76.

11 Q. When the transfer from the Penn  
12 Central to Conrail occurred?

13 A. Date of conveyance, yes.

14 Q. Now, I assume that some of the  
15 same practices continued under Conrail  
16 that had existed under Penn Central?

17 A. Yes.

18 Q. All right.

19 A. That's true.

20 Q. In other words, it wasn't like a  
21 curtain suddenly coming down in a play  
22 where everything changed in April of  
23 1976, was it?

24 A. No.

25 Q. It took, what, a number of years

1 Mitchell

2 to make the changes?

3 A. Oh, yes. It took quite a while  
4 to -- yes, to make the changes. There was  
5 a majority of procedures and policies and  
6 things were -- at Penn Central had  
7 developed were more or less adopted  
8 system-wide. Of course, there was bits  
9 and pieces that we took from the other  
10 railroads, "Hey, that's a good idea,  
11 let's do business this way."

12 Q. What about hazardous materials,  
13 did you notice any significant change  
14 that occurred in the transfer, and if so,  
15 when was that?

16 A. I did not notice any significant  
17 change at all, as I recall it was more or  
18 less the other railroads that now made up  
19 Conrail. I mean, Penn Central was the  
20 nucleus, and the other railroads that  
21 were drawn into Conrail were into this  
22 consolidation more or less adopted  
23 Conrail or Penn Central's policy on  
24 hazardous material.

25 Q. So that as you have said, there

1 Mitchell

2 was no laxity under Penn Central,  
3 likewise, that would be true under  
4 Conrail; right?

5 A. That's true.

6 Q. There was a concern, was there  
7 not, for the well-being, health, and so  
8 on of its employees, both under Penn  
9 Central and Conrail; is that right?

10 A. Oh, yes.

11 Q. And this would be true of your  
12 neighbors, people who lived in and about  
13 the areas both for Penn Central under  
14 their ownership and Conrail; isn't that  
15 right?

16 A. True.

17 Q. There was no disregard by either  
18 company, was there?

19 A. Not to my knowledge.

20 Q. That you are aware of?

21 A. No.

22 Q. When did the plackarding of cars  
23 containing hazardous materials begin, to  
24 the best of your recollection?

25 A. I don't have any idea.



1 Mitchell

2 Q. That was a federal requirement, I  
3 take it?

4 A. Correct.

5 Q. But do you recall it in existence  
6 during the mid 60's to the early 70's?

7 A. Yes.

8 Q. OHM, I think, all of us are aware  
9 was a cleanup contractor for Conrail, and  
10 I believe they were also a contractor for  
11 the -- for Penn Central; do you know  
12 that?

13 A. That could be true. I am not  
14 aware of that. Keep in mind, counselor,  
15 that I didn't -- my office had nothing to  
16 do with --

17 Q. I understand.

18 A. -- cleaning up.

19 Q. I am not trying -- --

20 A. I just didn't know that you  
21 realized that.

22 Q. The reason I say that, I've seen  
23 some records that bear that out.

24 A. Could be.

25 Q. Do you recall a rule that Penn

1 Mitchell

2 Central had that required in the event of  
3 a spill that a contractor be called, such  
4 as OHM, at all?

5 A. I don't recall that rule.

6 Q. Okay. You mentioned an R.B.  
7 Hasselman?

8 A. Yes.

9 Q. And he is retired?

10 A. Correct.

11 Q. And he was senior director --

12 A. Senior vice president.

13 Q. Of operations?

14 A. Yes, sir.

15 Q. How did he relate to hazardous  
16 materials, if at all?

17 A. Well, he was senior vice  
18 president of operations for all intents  
19 and purposes, runs the railroad. Okay.

20 And --

21 Q. This was under Conrail?

22 A. Under any railroad, if he's a  
23 senior vice president of operations, he's  
24 the guy that runs it.

25 Q. I guess my question is Hasselman

1 Mitchell  
2 was senior vice president of operations  
3 for Conrail?  
4 A. Yes.  
5 Q. Was he also under Penn Central?  
6 A. Not initially.  
7 Q. He did work for --  
8 A. He was vice president of  
9 transportation, and when Mr. Scofield  
10 left, he moved up. And I don't know that  
11 his title was senior VP of ops on Penn  
12 Central, but it was the same position.  
13 Q. So, he would be like a CO,  
14 corporate officer, operations officer?  
15 A. Yes, I guess you could call him  
16 that.  
17 Q. This would be at the top  
18 management level?  
19 A. Yes.  
20 Q. And the only one he would report  
21 to is the chairman; is that right?  
22 A. Correct.  
23 Q. And --  
24 A. Well, if they had a president, at  
25 that time going back a few years we had a

1 Mitchell

2 president, and I believe that they  
3 reported to the president. Currently  
4 there is no president, unless the CEO's  
5 title has changed. I don't know what his  
6 title is now.

7 Q. Going back to Penn Central and  
8 your best recollection of the --

9 A. Okay.

10 Q. -- management there, who do you  
11 recall was the last chairman of Penn  
12 Central?

13 A. I would be guessing if I gave --  
14 Langston. I don't know.

15 Q. I have no idea.

16 A. I don't know, either. At that --  
17 when I was getting started, I wasn't too  
18 much concerned about the chairman. I was  
19 worried about the supervisor right over  
20 my head. So --

21 Q. Well, tell me who between 1965  
22 and '70 basically ran the railroad, if  
23 you will, from Philadelphia, that you can  
24 recall?

25 A. Harvey Hasselman.

1 Mitchell

2 Q. All right. And you don't know who  
3 his chairman was?

4 A. Geez, I can visualize the fellow.  
5 Gee. I can't recall his name.

6 Q. Well, let's put it this way:  
7 Sometimes it's hard on the spot to  
8 remember the name. If you recall that,  
9 would you give me a call?

10 A. Sure.

11 Q. Okay. And any of the other  
12 people, I will give you my card at the  
13 end of the day and we will share that  
14 with the others; okay?

15 A. Sure.

16 Q. And you think Hasselman is still  
17 living, or not?

18 A. I am sure he is.

19 Q. Tell me what you know about the  
20 computerization, if you will, of  
21 hazardous material spills when you were  
22 last with Conrail; did they have some  
23 kind of system that --

24 A. Yes.

25 Q. -- kept this --

1 Mitchell

2 A. We have a system that safety  
3 department developed through Mr. McNally,  
4 the haz/mat section, working with the  
5 programmers and the system people they  
6 put into the computer a haz response, and  
7 that would give you, as we went through  
8 these reports you are seeing, that they  
9 give you the chemical, properties of the  
10 chemical, how to handle it, what not to  
11 do, and things of that nature.

12 Now, what's unique about that  
13 is that we have -- we, Conrail -- has  
14 that option, every office that has a  
15 machine. We just go in there and punch it  
16 in, and out it will come. And we can also  
17 -- we also have that information  
18 accompanies a train. It goes out with the  
19 train, so that the crew has immediate  
20 access to that information.

21 Q. Unlikely as this may be, let me  
22 pose a question as follows: If I wanted  
23 to find spills of carbon tetrachloride  
24 from a period beginning in 1976 to the  
25 present at Elkhart, Indiana. On the

1 Mitchell

2 computer, what would I have to do to get  
3 that information?

4 A. I don't know that you could get  
5 it from '76 on.

6 Q. All right.

7 A. I forget when we put our program  
8 into effect. I don't know when we went  
9 computerized. It's been a while. But you  
10 could probably pick it up from that date  
11 forward.

12 Q. Let's assume for a minute that  
13 the computer came in in 1980. And I am  
14 not pinning you to that, but let's just  
15 make that assumption. How would I get  
16 that information out of there, or attempt  
17 to get it?

18 A. Personally how would you get  
19 it?

20 Q. Yes.

21 A. I would suggest you go to  
22 corporate headquarters or to a  
23 headquarters location, a division  
24 headquarters, and request it through  
25 supervision.

1 Mitchell

2 Q. This would be here in  
3 Philadelphia?

4 A. It could be done in Philly. I  
5 could be done locally, probably.

6 Q. And do you know how to draw that  
7 information up?

8 A. Do I know how to --

9 Q. I mean, how would a person -- you  
10 know, just generally. We will get that  
11 information, but we are trying to  
12 simplify it. That's one of the --

13 A. Then I would suggest you go to --  
14 go to -- contact our legal department,  
15 our Conrail legal department, ask them,  
16 tell them what you are looking for, and  
17 they in turn would probably call safety,  
18 tell them -- if in fact they were going  
19 to give that information to you -- and  
20 they would go about culling it off the  
21 tapes.

22 Q. We are assuming we have that  
23 permission. And Mr. Ermilio has been very  
24 cooperative with us, but we just haven't  
25 asked him for that yet. I am trying to



1 Mitchell

2 find that information as if I were a  
3 novice, okay. Beginning with -- would  
4 this be computerized by rail yard?

5 A. I would imagine -- I don't know  
6 how the program was put together, but I  
7 -- I am guessing that you could probably  
8 go in by -- and ask for that information  
9 by commodity number. Each chemical has a  
10 number. And I forget what that's called.  
11 DOT ID number, is what --

12 Q. So, if I were looking for carbon  
13 tet, that would have a symbol?

14 A. Yes.

15 Q. XXX or something?

16 A. Yes.

17 Q. You put that in, and then that  
18 would --

19 A. I would imagine that would then  
20 print out. I wouldn't know why you  
21 couldn't go in and ask for the chemical  
22 and then ask for a code of that yard and  
23 see what pops out. I would guess --

24 Q. But somebody runs that computer  
25 who is head of it, right, there is a

1 Mitchell

2 department?

3 A. Oh, there is a systems  
4 department and it's in charge of the  
5 computer, yes.

6 Q. That's why some of the copies  
7 began to go to the director of hazardous  
8 materials systems, is that the  
9 computer?

10 You know, I noticed on some of  
11 the exhibits the later ones after  
12 Phemister was gone that copies went to --

13 A. The director -- no, that's the  
14 fellow that -- they still went to the  
15 Phemister's office. Phemister was gone  
16 for a while before they filled the job,  
17 if they filled it.

18 Q. But my question is -- and I could  
19 be way off -- they used the title  
20 director hazardous materials system; is  
21 that the computer system?

22 A. I would -- I don't know that. I  
23 don't know whether that was -- they  
24 dropped Phemister off or that went to us.  
25 I don't think that's -- I don't know, I

1 Mitchell  
2 would be guessing if I --  
3 Q. Well, if you had to use a  
4 computer to get some information, which I  
5 guess you had to do once in a while in  
6 your job; no?  
7 A. No. No.  
8 Q. Okay.  
9 A. They put that on my desk, and a  
10 week later I was out of town. No, I mean,  
11 I left right there.  
12 Q. Someone else would do that for  
13 you?  
14 A. Yes.  
15 Q. And tell me, again -- and we will  
16 leave this area -- who was on your staff  
17 when you were there in 1990? I think we  
18 mentioned some of the men, but tell me  
19 how it went down?  
20 You were the top man?  
21 A. I was the director of safety.  
22 Q. Okay.  
23 A. I had an assistant director of  
24 safety that worked for me by the way of  
25 Frank Marshall, who is deceased. Frank

1 Mitchell

2 Marshall handling the field force, the  
3 regional division safety people and in  
4 addition to that some other staff  
5 personnel. I had a manager of -- and I am  
6 not remembering these -- but he handled  
7 all the statistical work and reporting to  
8 Washington, and he was the manager of --  
9 geez, I forget what his title was.  
10 Statistics. I don't know. But at any  
11 rate, his name was Jim Fenley.

12 Q. What about McNally, how did --

13 A. Jim McNally was the manager of  
14 hazardous material.

15 Q. And he was under you?

16 A. Yes, he reported directly to me.

17 Q. So, he had a key job in the  
18 hazardous material area?

19 A. He was the key man.

20 Q. Okay. So, is he still living?

21 A. Yes, he is. He is still working.

22 Q. Works for Conrail now?

23 A. He's now director.

24 Q. How does Mr. Pendergast relate to  
25 him; was he in his department?

1 Mitchell

2 A. He was, not the same department,  
3 an equal.

4 Q. An equal?

5 A. Yes. But he worked for the  
6 environmental group, and right now Mr.  
7 Pendergast is the environmental group.  
8 No, he isn't, either. No, he isn't. Now I  
9 just understand they added another to-do  
10 where they pumped that department up.

11 Q. Right.

12 A. But Tom Pendergast was basically  
13 on a level with Jim McNally. He did not  
14 report to safety.

15 Q. Did Tom Pendergast work for Penn  
16 Central?

17 A. Yes.

18 Q. So, he would know, also, some of  
19 the materials that would have been used  
20 during the period of time I was talking  
21 with you about, some of the practices  
22 that were taking place under --

23 A. I don't know what Tom would know.  
24 I couldn't answer that question,  
25 Counselor.

1 Mitchell

2 Q. How about H.R. Elliott?

3 A. H. R. Elliott worked for Mr.  
4 McNally.

5 Q. Part of his staff?

6 A. Yes.

7 Q. And --

8 A. And that's just recently. I mean,  
9 that's in the last five years, I think.

10 Q. Now, did the regions, regional  
11 supervisors, say, from Dearborn, report  
12 directly --

13 A. Safety?

14 Q. No. I am talking about to  
15 McNally, did he get his reports from the  
16 regions like Dearborn?

17 A. Yes.

18 Q. Okay.

19 A. Division or regions.

20 Q. So, those guys were right under  
21 him?

22 A. No, Jim -- he had no field  
23 people. He got his reports from terminal  
24 superintendent, mechanical officer, that  
25 sort of thing.

1 Mitchell

2 Q. All right. Was there any reason  
3 that Phemister was not getting copied  
4 after a certain time or --

5 A. I am guessing that's when he  
6 left. He went -- I don't know, he went  
7 with another Washington organization. I  
8 don't know what -- I think he went with  
9 the feds. I am not sure.

10 Q. So, they will have a whole bunch  
11 of records over at that department, too?

12 A. I don't have any idea what they  
13 have.

14 Q. Do you remember in Exhibit 20  
15 there was a spill incident that occurred  
16 which had the symbol NOS on it, not  
17 otherwise specified, I think you said?

18 A. Correct.

19 Q. Does that mean they didn't know  
20 what the chemical was?

21 A. No, they knew what it was, but it  
22 was -- I don't want to -- McNally would  
23 be the one to ask that question to. All I  
24 know is NOS means not otherwise  
25 specified. In other words, they don't

1 Mitchell

2 have it listed and you couldn't go to the  
3 computer and pull that chemical out.

4 Q. Could it have been carbon tet?

5 A. I don't know that.

6 Q. At any rate, you will recall in  
7 that Exhibit 20 there was a letter  
8 written by the sales department  
9 indicating to, I think it was the  
10 shipper, the fact that a couple of  
11 employees had been -- had received  
12 hospitalizations as a result of this or  
13 became sick?

14 A. Okay. If that's -- without  
15 reading -- rereading it --

16 Q. Right. The sales department gets  
17 involved, I take it, where there has been  
18 a loss of material usually; is that  
19 right?

20 A. I don't -- I mean, it gets  
21 involved.

22 Q. I am sorry. Let's strike that.  
23 The sales department gets involved as a  
24 representative of the company dealing  
25 with customers; right?



1 Mitchell

2 A. Sure.

3 Q. To resolve as best they can  
4 disputes that may arise --

5 A. Well, we have a customer services  
6 group now, and I don't know that we had  
7 one years ago. But I know they have one  
8 now that handles most of the -- but sales  
9 do get involved, sure.

10 Q. Let me see what else I have here.  
11 Do you know what the role of the American  
12 Association of Railroads is in reporting  
13 or inspecting releases or spills?

14 A. I know that they investigate  
15 releases. Well, a spill would be a  
16 release. Whether -- I don't know what any  
17 of their reporting requirements would be.  
18 I don't think there are any, because I  
19 don't think the feds would make us report  
20 twice. I would say that the bureau of  
21 explosives does their investigations and  
22 digests that information and then would  
23 come forward with industry standards that  
24 would maybe preclude that type of  
25 incident from happening again.

1 Mitchell

2 Q. I see. Or if legislation were  
3 being proposed that may have an adverse  
4 effect on the industry, they may be able  
5 to cite their own experience and use that  
6 --

7 A. Oh, sure.

8 Q. -- in defense, perhaps?

9 A. I would think so.

10 Q. And does the AAR have local  
11 inspectors, that is, people who would go  
12 out to Elkhart?

13 A. Yes.

14 Q. I think we did see that?

15 A. Yes.

16 Q. Do they live there in Elkhart or  
17 do they travel out there?

18 A. No, they have a similar -- you  
19 know, an area that they are responsible  
20 for, whatever that may be. And it does  
21 not necessarily coincide with, you know,  
22 the way Conrail is structured or Penn  
23 Central was structured.

24 Q. To the best of your knowledge,  
25 how would one locate all reports to any

1 Mitchell

2 agency or entity or internal reports,  
3 formal or informal, of releases or spills  
4 of hazardous substances at Elkhart rail  
5 yard since April 1, '76, to present?

6 A. Go into the system office here in  
7 Philadelphia, and I believe that's what  
8 this --

9 Q. So, your answer would be that  
10 would all be contained in the 5800's?

11 A. To the best of my knowledge, yes.

12 Q. And do you have an explanation as  
13 to why they are not complete, by that I  
14 mean they only begin in 1977, to the  
15 present?

16 A. No. Let me think about that. In  
17 other words, our records only go back to  
18 '77, is that what you are staying?

19 Q. That's all I have here.

20 A. Well, I don't know that we would  
21 be required by law to keep anything  
22 earlier than that.

23 Q. I see. So, it may be that the  
24 records exist, but -- or they may not  
25 exist, because there was no

1 Mitchell

2 responsibility for keeping such records?

3 A. That's probably -- probably the  
4 second sentence is probably closer to the  
5 truth. I don't know, you know -- I can't  
6 really answer the question. I don't know  
7 why. I am just guessing.

8 Q. Who now would be able to answer  
9 that question at Conrail, Mr. --

10 A. I would suggest you contact the  
11 law department.

12 Q. Or Mr. McNally; would he know?

13 A. No -- I would -- Jim may know the  
14 requirements for keeping the records, but  
15 I am sure the law department would --

16 Q. Who took your job when you left?

17 A. There was a little change. The  
18 title of my job was filled by W. L.  
19 Barringer, whose name you have seen  
20 floating around on a few of those papers  
21 in here today, but they moved in a fellow  
22 to oversee or step -- you know, step over  
23 him by the name of R. N. Dawson. And he  
24 -- I don't know what his title is. Might  
25 be general manager safety.

1 Mitchell

2 Q. And I think we have covered this,  
3 but just one more question in that area,  
4 in the late 60's, '65 to '70, you are not  
5 aware of who was responsible for  
6 reporting spills from Philadelphia to the  
7 government at that time?

8 A. No.

9 Q. But you did -- the only thing you  
10 really know about that is that employees  
11 were aware that in the event of a spill  
12 it had to be told to the yard master or  
13 someone in authority; is that correct?

14 A. Yes.

15 Q. Okay. And is it also my  
16 understanding that you have never seen a  
17 report or heard of a release or spill of  
18 carbon tet or TCE during your tenure or  
19 prior to your tenure?

20 A. I don't recall that I have ever  
21 -- I don't recall that if, in fact, it  
22 happened. I don't recall reviewing it and  
23 carbon tet being the commodity, no, I  
24 don't recall that at all.

25 Q. Let me just look over the reports

1 Mitchell

2 for a minute. Let me just take a minute,  
3 and this will save time, I think.

4 Did I ask you where Mr. Dehl  
5 lives now?

6 A. I don't know that you asked me,  
7 but the answer to your question is I have  
8 no idea.

9 Q. But he is retired; right?

10 A. Yes.

11 Q. How about J. Z. Harding, who is  
12 that?

13 A. Jim Harding, retired. As far as I  
14 know, he lives in the Philadelphia area.  
15 Assistant manager haz/mat.

16 Q. Had he worked for Penn Central,  
17 too?

18 A. Yes.

19 Q. Still living?

20 A. I believe so.

21 Q. I think that's all the questions  
22 I have. In the event we need further  
23 questions, we will take your deposition  
24 under the third party claim, but I think  
25 that's fine. I appreciate your coming.

1 Mitchell

2 MR. JAFFE: I have nothing  
3 further.

4 MR. ERMILIO: I have no  
5 questions for you.

6 ( Whereupon, the deposition was  
7 concluded at 3:20 p.m.)

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I N D E X

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WITNESS

PAGE

MICHAEL C. MITCHELL

BY MR. JAFFE:-----3

BY MR. CUNNINGHAM:-----113

EXHIBITS

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Exhibit 2	Subpoena.	Page 3
Exhibit 3	Letter dated 1/15/93 to Michael Mitchell from Maria Polverini.	Page 3
Exhibit 4	Hazardous materials incident report dated 2/3/81.	Page 22
Exhibit 5	Hazardous materials incident report dated 7/6/81.	Page 35
Exhibit 6	Hazardous materials incident report dated 9/6/81.	Page 43
Exhibit 7	Hazardous materials incident report dated 11/16/81.	Page 45
Exhibit 8	Hazardous materials incident report dated 11/18/81.	Page 48
Exhibit 9	Letter dated 2/25/82 to chief information systems division from Michael Mitchell.	Page 50
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Exhibit 11	Letter dated 4/6/84 to DOT from Michael Mitchell.	Page 57



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Exhibit 19	Letter dated 9/26/88 to DOT from Michael Mitchell.	Page 96
Exhibit 20	Letter dated 9/5/89 to DOT from Michael Mitchell.	Page 99
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C E R T I F I C A T E

I, the undersigned, MICHAEL C. MITCHELL,  
have read the foregoing, and it is a  
true and correct transcript of the proceedings  
with the following exceptions, as noted below:

PAGE	LINE	REASON
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DATE

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SIGNATURE

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